JOINT APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 79-1013

WILLIAM RUBIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR CERTIORARI FILED DECEMBER 19, 1979

CERTIORARI GRANTED APRIL 14, 1980

INDEX

PAGE

Relevant Docket Entries 1a

Relevant Portions of Trial Transcripts 3a

Relevant Exhibits 123a

Order Granting Certiorari 179a

WITNESSES FOR GOVERNMENT

John Joseph Keating:

Direct 3a, 31a

Voir Dire 30a

Cross 64a

Redirect 66a

Thomas Cox:

Direct 72a

Max Englander:

Direct 85a

Charles Leeds:

Direct 86a

John E. Pinto, Jr.:

Direct 89a

Redirect 96a

PAGE

Alfred Reeves:

Direct 97a

Donald W. Jennings:

Direct 104a

WITNESS FOR PETITIONER

William Robert Rubin (Petitioner):

Direct 120a

Cross 121a

EXHIBITS FOR GOVERNMENT

1—30 Day Promissory Note for $50,000, dated October 20, 1972 ..... 123a

7—Blank Stock Power 125a

8—Blank Stock Power 127a

11—3 Month Promissory Note for $50,000, dated November 20, 1972 ..... 129a

12—3 Month Promissory Note for $50,000, dated November 22, 1972, Extending the October 20, 1972 Note for 3 Months 131a

14—3 Month Promissory Note for $100,000, dated November 30, 1972 ..... 133a

16—3 Month Promissory Note for $275,000, dated December 6, 1972 ..... 135a

19—Power of Attorney 136a

20—Corporate Resolution 137a

PAGE

21—Demand Note for $475,000, dated February 26, 1973 ..... 139a

28—Blank Stock Power 141a

29—Blank Stock Power 143a

30—Tri-State Energy Corporate Resolution, June 28, 1972 ..... 144a

37A—Stock Power 145a

37B—Undated Stock Power 147a

37C—Undated Stock Power 149a

38A—Undated Letter of Consent to Pledge Stock 150a

47—Draft Memo of Bankers Trust Company, dated December 6, 1972 ..... 154a

48—Draft Memo of Bankers Trust Company, dated January 11, 1973 ..... 156a

49A-7—Memo from John J. Keating to W. C. Powderly, dated February 2, 1973 ..... 160a

49A-8—Draft Memo of Bankers Trust Company, dated January 11, 1973 ..... 161a

49B-7—Letter from Jack Lifsitz to William R. Rubin, dated October 27, 1972 ..... 166a

49-58—International Advice Re: Satellite Systems Corp. 167a

57—Investment Letter, General Investment Stock 168a

65—Bankers Trust Company Notes, dated April 16, 1975 Re: Stocks and Loans, Tri-State Energy Company 169a

PAGE

147—Pink Sheets—All States Life Insurance Co. Stock 170a

163—Affidavit of Confession of Judgment 175a

EXHIBIT FOR PETITIONER

J—Minutes of First Board of Directors, Tri-State Energy Held July 7, 1972 ..... 176a

JOINT APPENDIX

Relevant Docket Entries

Date	*Proceedings*
1-27-78	Filed Indictment and related to 78-cr-76. . . . Motley, J.
2- 2-78	Defendant (attorney present) pleads not guilty.
3-22-78	Filed affidavit of Louis Bender in support of motions addressed to the indictment.
4-10-78—	Filed Affidavit of R. K. Neugarten, AUSA, in opposition to defendant's omnibus motions.
4-10-78	Filed Government's memorandum in response to omnibus motions.
5- 8-78	Defendant and attorney present. Jury trial commenced.
5- 9-78-5-25-78	Trial continued.
5-26-78	Trial continued and concluded. Jury finds defendant Guilty on Count 1; Count 2 is DISMISSED on Government's motion; Not Guilty on Count 3. Sentence 6-30-78. Bail continued. Motley, J.
6-30-78	District Court Judgment set out in Appendix B to the Petition for Certiorari.
6-30-78	Filed NOTICE OF APPEAL of Defendant to United States Court of Appeals for the Second Circuit from Judgment of conviction.
7-6-78	Filed True Copy of United States Court of Appeals Order that motion is granted to the extent that surrender is stayed until July 5, 1978 by which time the court can consider the motion on a complete record.

Relevant Docket Entries

Date	*Proceedings*
7-11-78	Filed True Copy of United States Court of Appeals Order granting continuation of appellant on bail and under same conditions Re: determination of appeal and that a briefing schedule be arranged promptly.
6-30-78	Filed Transcripts of Record of Proceedings dated: May 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 30, 1978.
	Judgment of the District Court affirmed in an Opinion dated September 6, 1979, set forth in Appendix A to the Petition for Certiorari.
	The issuance of the mandate stayed by the Court of Appeals on October 10, 1979 pending application to this Court for a writ of certiorari.
	Petition for rehearing and in the alternative for a hearing en banc denied by the Court of Appeals on November 20, 1979.

Relevant Portions of Trial Transcript

* * *

[210]* JOHN JOSEPH KEATING, called as a witness on behalf of the government, having first been duly sworn, testified as follows:

(Direct Examination)

* * *

[216] Q. What were the general nature of the kinds of corporate loans that were done out of that branch in 1972 as you knew it? [217] A. By industries?

Q. By industries? A. About half of the loan portfolio was to garment center, mostly women's wear manufacturers and the other 50 percent was spread amongst several industries really with no concentration at all.

Q. Was a written loan application customarily used for corporate loans of Bankers Trust? A. No, there was no written loan application.

Q. How would a corporation obtain a loan? A. Basically they would come into the bank, they would present financial statements on the corporation, they would give a general resume of what the corporation did and what business they were involved with, a description of their—of the officers of the corporation and generally, in most instances, the bank would ask for a projection. If they were asking for a loan, a projection was merely a form of indicating how they were going to pay the loan back.

Q. A projection of what? A. Basically of cash flow, generally, mainly whatever sales were going to be gen-

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* Figures in brackets refer to the page of the Stenographic Transcript.

erated over whatever period of time and how these sales would be turned into cash over another period of time to pay the loan off.

Q. Did bank procedures let a loan office make a loan [218] by himself or herself? A. No, Bankers Trust required two signatures on—for a loan to be approved, and both signatures—the officers who signed the loan application both had to have authority equal to cover the amount of the loan.

Q. When you say authority equal to the limit, what kind of authority are you talking about? A. Lending authority. The bank assigns to each lending officer a certain amount of lending authority, meaning maybe you would have 100,000 or 200,000 dollars in authority. In other words, the bank was giving you the right to make that amount of loan with another lending officer.

Q. So, you could loan—if you had $100 thousand authority, you could make a loan up to $100 thousand? A. That's right.

[219] Q. Do you recall what lending limit you personally had in 1972, the latter half of 1972? A. I am not exactly certain. I think it was a hundred or $200,000. It was one or the other. I know it was increased during that period. I am not exactly sure when it was increased.

Q. When a loan was made by a branch, in your case, the Seventh Avenue branch, under what circumstances if any would it be reviewed by somebody outside of your branch? A. Generally you could send a copy of a memo covering the transaction to an area of the bank called "loan administration", but the branch really had the authority to make loans without sending—without any concurrence from anybody else up to a half million dollars.

Q. Above a half million dollars, that is $500,000, was there a different procedure? A. Above a half million

dollars there were two people at the branch that had what was described as the unlimited lending authority of the bank; in other words, they could lend up to the legal limit.

Every bank has a limit imposed on it by the Federal Reserve System where you are not allowed to lend more than 10 per cent of your capital and surplus.

[220] At that time, Bankers Trust had, I believe, somewhere around $67 million in legal lending limit. Ray Ludwig had legal lending limit authority or unlimited authority, so if a loan was going out of the office, he would have to get the concurrence of somebody else in Loan Administration for anything above $500,000.

Q. So in other words, if Mr. Ludwig wanted to make a loan of $525,000, he needed somebody outside of your branch? A. Exactly.

Q. But anything—$500,000 or less, he was the highest authority? A. That's correct.

• • •

[221] Q. Did there come a time in 1972 when you heard of a [222] company called Tri-State Energy? A. Yes. I first heard of Tri-State Energy on October 19, 1972.

Q. Do you recall the circumstances under which you heard of Tri-State Energy? A. Yes. There was—was late in the afternoon. It was after banking hours had closed. There was a meeting going on at Ray Ludwig's desk which was in clear sight of my desk. The way the lending officer seats were arranged was on a long narrow corridor, almost like the jury box over here. There was a meeting going on, there were three gentlemen there

with Mr. Ludwig, and Mr. Ludwig—I could see conversations going on—called me over, informed me that we were going to be making a loan to Tri-State Energy which he said was a coal company, that the loan would be booked tomorrow because it was after banking hours at that particular time, and that I should go back to my desk and open up checking accounts and get the normal information that you would when you would be starting a new relationship from a company.

Q. When you say it was after banking hours, what was the close of banking hours at that time? A. Three o'clock, so it was somewhere between—after three. I am not exactly sure.

[223] Q. Did Mr. Ludwig introduce you to the three persons with whom he was? A. Yes, he did.

Q. Do you recall their names? A. C.W. Deaton, William Rubin and Leonard James.

Q. Do you recognize anyone in the courtroom today? A. Yes, I do.

Mr. Bender: That identification is conceded.

Ms. Neugarten: The identification of the defendant Rubin, I assume.

Mr. Bender: None other.

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[225] Q. Were you told what the loan was for? A. I believe that the initial loan was for payroll at the mine.

• • •

Q. Did you do any paper work with respect to that loan on that date? A. Yes, we took in several documents, including the note itself which is like the equivalent of

an IOU from the corporation, and we had deposit resolutions, borrowing resolutions and corporate guarantees of the three principals.

* * *

[228] specific conversations that you mention, what positions the three people have at Tri-State? A. Leonard James was the president of the corporation, C.W. Deaton was secretary-treasurer, and William Rubin was the vice-president.

Q. Was the loan to be effective that day, October 19 or some other time? A. No, it couldn't be effective that day because the loan had to be processed by the clerical staff. They were—it was past banking hours, so that couldn't be done. The loan was to be effective the next day, on the 20th of October.

Q. That's 1972? A. Yes, sir, 1972.

Q. How was Tri-State to obtain the money that was borrowed? A. The money was to be credited to their checking accounts.

Q. At what bank? A. Bankers Trust, Seventh Avenue Branch.

Q. That was the checking account that you opened on that day? A. Yes, that's correct.

Q. Were they to get $50,000 or some other amount? [229] A. It was a liability less than $50,000. The way Bankers Trust processed loans, they discounted the interest in advance. What they did was they deducted whatever one month's interest was from the proceeds of the loan so they would receive $49,000 and some hundreds.

I would have to see the note to know the exact amount, but it was something less than $50,000.

John Joseph Keating—for Government—Direct

Q. Did there come a time that Bankers Trust received initial collateral on that loan? A. Yes.

Q. Do you recall when that was? A. I believe it was delivered to the bank on the 20th of October. It was a stock certificate, and I knew that the stock certificate was coming in because on the 19th, during the conversations, Ray Ludwig told me that we would be receiving collateral on the loan.

Q. Do you recall who brought in the stock certificate? A. It was Rubin or Deaton or both, perhaps, I am not certain at this time.

• • •

[233] A. Government's Exhibit 6 is a stock certificate for a company named American Leisure Corporation. The stock certificate is registered in the name of Tri-State Energy. It is for 400,000 shares and there is a legend on the stock meaning that the stock is restricted.

Q. Now, is this the stock certificate which you earlier testfied you received as collateral the next day which is October 20, 1972? A. That's right.

Q. Now, Government's Exhibit 7 and Government's Exhibit 8 for identification, two separate pieces of paper. A. Okay.

Government's Exhibits 7 and 8 are stock powers signed by Tri-State Energy and by C. W. Deaton with the signature guaranteed by Chelsea National Bank, an officer of that bank guaranteed that this was the signature of C. W. Deaton.

And the stock powers would be used by a bank [234] when they would be accepting marketable securities as collateral so that they could sell them if they had to at some future date.

Q. Now, both Exhibits 7 and 8 are stock powers, is that correct? A. Yes.

Q. Now, do you have a precise recollection of when you received those stock powers? A. I imagine it would have been the day that the stock was delivered, because that would be standard policy. I can't recall specifically, but if you were receiving a stock and you didn't have the stock powers you really wouldn't have collateral.

Q. But they are not dated, is that correct? A. No, they are not.

• • •

[235] Q. Now, Government's Exhibit 9 for identification, can you identify this document? A. Yes, I can.

Government's Exhibit 9 is what Bankers Trust Company calls an offering ticket. And what this is basically is the vehicle whereby a loan is put on. Okay? This creates the loan in the bank. And the information on the offering ticket gives the date of the loan, the name of the company, the amount, the maturity date, the rate of interest being charged, whether the loan is a new loan or a renewal of an already existing loan, what type of loan it is, if there are any guarantees involved and who the guarantors are.

And if we have any collateral for the loan. And also, it gives the initials of the two lending officers who create the loan.

• • •

[237] A. Right.

Q. Do you see the words "Tri-State Energy"— A. Right.

Q. —printed on the front of them? A. Right.

Q. I mean hand printed on the front of them. Do you recognize the handwriting? A. Ray Ludwig's printing.

John Joseph Keating—for Government—Direct

Q. And the offering ticket, Government's Exhibit 9 in evidence, by whom is the information on this offering ticket filled out? A. The information on the offering ticket is filled out by clerks, they called it the general cage in the bank, that was the jargon for the area who prepared this—

* * *

A. It was prepared by clerks. The general case was [238] the name of the area who prepared the offering ticket.

Q. Now, you see a column "R or N"? A. Yes.

Q. What does that mean? A. That means whether the loan is a new loan or whether it is a renewal of an existing loan.

Q. And what is the indication on that offering sheet, Exhibit 9 in evidence? A. It's a new loan.

Q. Now you see a column labeled "Rate"? A. The rate on the loan was 7 percent.

Q. That refers to the interest? A. Yes.

Q. And you see a note "RA"? A. Yes. There is a—printed there it says "Lien Stock, 400,000 shares American Leisure Corp."

Q. And to what does that refer? A. To the stock that was given as the collateral for the loan.

Q. So in other words, the collateral is lien stock? A. No, the lien stock is when a bank—basic jargon that was used in the bank at that time was that when you were taking collateral, side collateral for a loan, you would say lien stock of whatever numbers of shares it would [239] be.

Q. Now, when you said "side collateral," can you tell us what you mean by that? A. Well, when the loan was made initially, the loan was envisioned that it would be

repaid from the ongoing operations of the corporation, namely from the sale of coal or natural gas. The collateral was taken as a secondary source of repayment in the event that the primary source, the ongoing operations of the corporation didn't materialize.

* * *

[241] Q. Now, directing your attention from Government's Exhibit 1, next to Government's Exhibit 6 in evidence, you see a red stamp. A. Yes.

Q. Could you read it out loud as best you can? It is printed over other writing, I believe. A. "The shares by this certificate is unregistered [242] stock, and these shares may not be sold, disposed of or otherwise distributed without, one, complying with the registration requirements of the Securities Act of 1933 as amended, and these rules and regulations thereunder, or, two, without obtaining an opinion of American Leisure Corp.'s counsel that the proposed disposition of said shares is"—and I can't make out the last line.

Q. Now, before you got this particular collateral on October 20th, had you ever seen a stamp of a similar kind on a stock certificate before? A. Yes.

Q. And have you since? A. Yes, I have.

Q. And what did you understand it to mean? A. Well, basically, it is a restriction having to do with some insider information on a stock. Basically, the stock—it is not marketable in a broad sense. It can be sold, but the only amount of the stock that can be sold is predicated on I think the activity for the prior six months or year, a certain percent of that activity.

Q. Now, as a practical matter, did that have any significance—does that have any significance to the worth of a

stock certificate as collateral? A. Because it isn't as marketable as an unrestricted [243] stock, the worth of the collateral is substantially reduced, because if you had to sell the stock, you could only do it in dribs and drabs over a long period of time. You couldn't sell it all at once.

Q. So this certificate would have been more valuable if it didn't have that stamp? A. Yes.

Q. To you, for collateral. A. Yes.

Q. Now, do you see—would you read the line beginning "This certifies"? A. "This certifies that Tri-State Energy, Inc. is the owner of"—keep on going?

Q. Yes. A. —"400,000 fully paid and non-assessable shares of common stock without par value of American Leisure Corporation"—

Q. Okay, stopping there.

What did you understand that to say? A. That Tri-State was the owner of the stock.

Q. Now, were you at any time ever told by Rubin, Deaton or James, anything to the contrary? A. No.

Mr. Bender: I object to that. I object to the [244] form of the question, your Honor.

The Court: Well, I gather the suggestion is it is leading?

Mr. Bender: Also, I think the question ought to be directed to whether Mr. Rubin ever said anything, not what somebody else said. This man has indicated that he's been at the bank, he has met Mr. Rubin and in I don't know what period of time we are referring to in this question.

Q. The question is at any time. An open-ended question.

The Court: At any time.

A. At no time did they say that this was anything else but their stock.

Q. Now, at the time you received this, which was October 20, 1972, what did you understand to be the relationship between restrictions on stock and stamps like this red stamp on stock certificates? A. At that time I believed the only way a stock could be restricted was if it had this stamp on the certificate.

Q. Have you generally discovered whether you were correct or incorrect in your belief? A. I was incorrect.

Q. And you have learned that stock can be [245] restricted and not have a stamp? A. Yes. It can be restricted through—by means of a letter called an investment letter that's attached to the stock certificate with no stamp on the face of the certificate itself.

Q. Now, did Bankers Trust have any policy regarding whether or not restricted stock could be received as collateral? A. No, there was no policy.

The way a banker would look—a banker generally looks at any loan and says that collateral makes any loan better. So to that extent that we had restricted stock, it was better than if we had nothing at all. However, obviously the preference of any lending officer was to have unrestricted stock so that if anything went wrong with the loan he would be in a position to sell it right away instead of over an extended period of time.

Q. Now, again, do you recall who brought you that stock certificate, Government's Exhibit 6? A. It was Rubin or Deaton or both.

Q. And that was on October 20th? A. Yes.

Q. And did you have any conversation with the person or persons who brought you that certicate? [246] A. Yes, I had a conversation with him and specifically what was said it was that it was fine that they were bringing in the

restricted stock, but the desire of the bank was to get good marketable collateral and we were informed by either Deaton or Rubin, or perhaps both of them, that we would be getting good marketable collateral in the future and we would be getting New York Stock Exchange collateral.

Q. Were you told anything regarding the restriction on this particular stock? A. Yes. It was indicated—I can't recall who said it—but that the restriction would be released at some future date.

Q. When you say you can't recall who said it, who were the— A. Well, it would have been either Deaton or Rubin or both of them perhaps.

Q. But one of those two at least? A. One of those two.

Q. Now, did Tri-State in fact ever bring you unrestricted American Leisure stock? A. No.

Q. And did they ever in any way remove the stamp from the American Leisure stock? [247] A. No, they did not.

Q. Now, when you got the stock, the American Leisure did the person or persons who brought it to you tell you how it had been obtained by Tri-State? A. Yes. The conversation that I recall having with Deaton or Rubin or both of them was that they had gotten the stock in a coal swap. In other words, they had a mine in Kentucky and they traded part of the rights to, a certain amount of coal in that mine, in exchange for the stock.

Q. Now, as of October 20, 1972, or after October 20, 1972, and during the next month, that would be up to and including November 20, 1972, did you ever talk to Rubin or Deaton? A. I talked to both of them on just about a daily basis, both in person and on the phone.

Q. And was that both of them together or separately? A. In both manners, they came in together on several occasions and they came in separately on several occasions.

Q. And do you recall of the two of them, that is Rubin and Deaton, whom you saw and talked to the most? A. Rubin.

Q. Now, did there come a time that Bankers Trust made another loan to Tri-State? [248] A. Yes.

Q. Now, handing you Goverment's Exhibits 11, 12 and 13 for identification, and referring to them again by number, would you identify each of those documents for the Judge and jury? A. Government's Exhibit 11 is another note that was dated November 20, 1972 for $50,000, and it was signed by C. W. Deaton of Tri-State Energy, Inc.

Q. Now, do you recognize his signature on that? A. Yes, I do.

Q. And turning to Government's Exhibit 12 for identification? A. Government's Exhibit 12 is a note for $50,000 dated November 22, 1972 by Tri-State Energy, Inc., signed by C. W. Deaton.

Q. And do you recognize his signature? A. Yes, I do.

Q. And does this note bear any initials on it? A. Yes, it bears the November 22nd note which is Government's Exhibit 12, it bears my initials and the note dated November 20th, which is Government's Exhibit 11 bears Ray Ludwig's initials.

Q. Now, when you say initials as to Ludwig—

Ms. Neugarten: Strike that.

[249] Q. Government's Exhibit 13 for identification. A. Government's Exhibit 13 is an offering ticket, it means the way a loan is created, dated November 22, 1972. It is for Tri-State Energy, Inc. and it reflects two loans being paid, one for $50,000 with a maturity date of February 22nd, and one for $50,000 with a maturity date of February 20th.

The February 22nd maturity date is a new loan and the February 20th maturity date is a renewal of the loan that was placed on October 20th and had matured.

The loans are guaranteed by Deaton, James and Rubin, and we continue to hold in lien stock the 400,000 shares of American Leisure Corporation.

Q. Now, is that initialed by anyone? A. Yes, it is initialed by Ray Ludwig and me.

Q. And the two loans to which Government's Exhibit 13 for identification pertains are the loans which are documented by Government's Exhibits 11 and 12 for identification? A. Yes. That's true.

> Ms. Neugarten: Your Honor, at this time the government offers Government's Exhibits 11, 12 and 13 for identification into evidence as Government's Exhibits 11, 12 and 13.
>
> Mr. Bender (handing).
>
> [250] Mr. Bender: I have no objection, your Honor.
>
> The Court: All right. Government's Exhibits 11, 12 and 13 are received.
>
> The Clerk: Government's Exhibits 11, 12 and 13 are received in evidence.
>
> (Government's Exhibits 11, 12 and 13 were received in evidence.)

Q. Now, directing your attention to Government's Exhibit 13 in evidence, you noted that it refers to guarantees of three people, is that correct? A. Yes.

Q. Now, did you obtain a second or new guarantee form at that time? A. No.

Q. And was there a reason why you did not? A. It wasn't necessary. The initial guarantee covers all and future loans that would be granted.

John Joseph Keating—for Government—Direct

Q. And what do you understand to be an unlimited guarantee which I believe is how you characterized those three guarantees that we have seen? A. The people who execute the guarantee, in this case Rubin, Deaton and James, guaranteed the loan regardless of how much it would be. If we had made a $100 million loan to the company they would be guaranteeing the full $100 * * *

* * *

[253] Q. Now, when the clerical staff went to fill in in cases where they did a value for collateral, do you know how they would do that? A. They would either get it from the newspapers or from documents that were called pink sheets because of this color which had the prices of stock that wasn't traded on either the New York or American Stock Exchange, what is called over-the-counter securities.

Q. So do I understand that for stock exchange traded stock they would go to the newspaper and for over-the-counter stock that was listed in the pink sheets, they would [254] go to this thing called the pink sheets? A. That's correct.

Q. Now, at the time that you got the loans—or you made the loans embodied by Government's Exhibits 11 and 12, did you have any conversations with anyone from Tri-State? A. Yes, I did. I spoke to Rubin or Deaton or both, and this particular—the loan itself was again for payroll, and again we were talking about getting additional marketable collateral which would be New York Stock Exchange collateral.

* * *

[255] Q. Now, directing your attention to Government's Exhibits 14 and 15 for identification, can you identify them for us (handing)? A. Yes.

Government's Exhibit 14 is a $100 thousand loan which is dated November 30, 1972, and it is signed by Tri-State energy. It was for three months. And again, they didn't [256] receive the full amount of the loan. In this instance the actual dollars received were $98,250 in one set and the interest that was discounted was $1,749.99.

Q. And you said it's signed by Tri-State. By whom? A. C. W. Deaton

Q. And Government's Exhibit 15 for identification? A. Government's Exhibit 15 is an offering ticket representing the granting of this loan, $100 thousand.

Again, the guarantees continued to be enforced of Deaton, James and Rubin, and we continued to hold the 400,000 shares of American Leisure as collateral.

• • •

[258] Q. Now, handing you what has been marked as Government's Exhibit 21 for identification, do you recognize that document (handing)? A. Yes, I do.

This is a demand note rather than a time note which the others were, meaning that these loans ran for a specific period of time.

This loan, this document here, Exhibit 21, was a loan that was payable on demand of the bank.

Q. And by whom is it signed? A. It is signed by Leonard James.

Q. Was that signature affixed in your presence? A. It was signed in my presence.

Q. And that is as distinguished from the other notes that you have referred to? A. Yes.

Q. And does it bear your initials on it? A. Yes, it does.

Ms. Neugarten: Your Honor, at this time the government offers Government's Exhibit 21 for identification in evidence as Government's Exhibit 21.

Mr. Bender: No objection.

The Court: Received. Government's Exhibit 21 is received.

[259] Q. Now, returning to Exhibits 14 and 15, again the offering sheet, Government's Exhibit 15 in evidence, was that prepared in the same way as the other offering sheets that you have discussed? A. Yes, it was.

Q. And it that described as a renewal or a new note? A. New loan.

Q. And this was for an additional $100 thousand beyond that that you previously loaned? A. It was a $100 thousand in new money.

Q. And at that point the total indebtedness of Tri-State to Bankers Trust was how much? A. $200 thousand.

Q. And did you have a conversation with anyone regarding this loan? A. Yes, I did.

Q. And do you recall with whom you had that conversation? A. Rubin or Deaton or both of them. And the basic conversation went along the lines that this loan would be used for small equipment purchases, as well as payroll.

[260] Q. And that's for the mining operation? A. Yes.

Q. Now, did there come a time that Tri-State borrowed further money? A. Yes.

John Joseph Keating—for Government—Direct

Q. And handing you Government's Exhibits 16 and 17 for identification, can you—do you recognize those documents? A. Document—or Government's Exhibit 16 is a note for $275 thousand dated December 6, 1972, signed by C. W. Deaton on behalf of Tri-State Energy.

Q. And does it bear your initials? A. Yes, it does.

Q. And do you recall whether or not Mr. Deaton signed it in front of you? A. No, I do not. It is possible that this could have been signed in blank.

Q. Now, directing your attention to Government's Exhibit 17 for identification. A. Government's Exhibit 17 is an offering ticket dated December 6, 1972. It shows $275 thousand with a maturity date of 3/6. It is a new loan, at 7 percent, and the loans continued to be guaranteed by Deaton, James and Rubin.

[261] We now have lien stock of $750 thousand, and it is signed by me, Ray Ludwig, and it has the initials of another lending officer named Jerry Weiner.

• • •

Ms. Neugarten: At this time the government offers Government's Exhibits 16 and 17 for identification into evidence as Government's Exhibits 16 and 17.

(Documents handed to Mr. Bender.)

Mr. Bender: No objection, your Honor.

The Court: Received. Government's Exhibits 16 and 17.

(Government's Exhibits 16 and 17 were received in evidence.)

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[279] Q. As of December 6, 1972, once this note, Government's Exhibit 16 for $275,000 was signed, what was [280] the total amount of the indebtedness of Tri-State Energy to the bank at that time? A. $475,000.

Q. Were you ever told by anyone at Tri-State the purpose for the $275,000 loan? A. Yes. Rubin told me the $275,000 loan was to buy a mining machine called an auger.

Q. Do you recall when you had that conversation with Mr. Rubin? A. Some time in the beginning of December. It could have been on the 6th, I am not certain.

Q. In the month commencing December 6, 1972, and running until January 6, 1973, did you have any other occasion or did you have any occasion to speak to Mr. Rubin? A. Yes, several times, both in person and on the telephone.

Q. Did you speak to Mr. Deaton at all during that period? A. Yes. There were several occasions where I spoke to Mr. Deaton also. At that time the primary contact person was Mr. Rubin.

Q. By "that time," you mean what time? A. December to January of 1972 and early 1973.

Q. Handing you what have been marked as Government [281] Exhibits 18, 19 and 20 for identification, would you tell us what those documents are by number, please? A. Government Exhibit 18 is an unlimited guarantee signed by C.W. Deaton. It isn't dated on the back. On the front there is a stamp dated November 17, 1972, and it is guaranteeing the debt of Tri-State Energy.

Q. Do you recognize the signatures of Mr. Deaton on that document? A. Yes, I do.

Q. Addressing yourself to Government Exhibit 19 for Identification. A. Government Exhibit 19 is a Bankers

Trust form called a power of attorney to endorse securities. It is signed by C.W. Deaton and dated the 27th day of November, 1972.

Q. The handwriting filling in that date, whose is that? A. The date is my handwriting.

Q. Do you recognize the signature of Mr. Deaton? A. Yes, I do, that's Mr. Deaton's signature.

Q. Addressing yourself to Government Exhibit 20 for identification. A. Government Exhibit 20 is a corporate resolution to transfer of securities. This is another Bankers Trust [282] form, and it is signed by Deaton and the signature is guaranteed by me.

Q. Is that your signature where the guarantee is? A. Yes, it is.

Q. Do you recognize the signature of Mr. Deaton? A. Yes, I do.

> Ms. Neugarten: Your Honor, at this time the Government offers Government Exhibits 18, 19 and 20 for identification into evidence as Government Exhibits 18, 19 and 20.
>
> Mr. Bender: No objection.
>
> (Government Exhibits 18, 19 and 20 were received in evidence.)

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[283] A. When you take stock as collateral, there are two ways in which you have the right to sell it; Number 1, you can take stock powers as we did when the American Leisure stock was delivered to the bank.

The second way you can do it is to get a blanket form called a power of attorney to endorse securities. This

form can be used in lieu of stock powers to cover various amounts of securities; in other words, if you have got tons of certificates, this one form would be used in lieu of getting an equal amount of stock powers.

It was just an effort to save paper.

The second document, corporate resolution on the transfer of securities is just a document that authorizes the bank, in other words, the corporation, meaning Tri-State Energy, is authorizing the bank that they are giving it the right to sell, assign, transfer or dispose of any stocks, bonds or other securities which the bank may hold as collateral.

Q. Before getting to the next note, was there a reason why you obtained that power of attorney and those corporate resolutions? [284] A. Yes, because we were in the process of receiving additional collateral for the loan and in addition to that we were promised on many occasions that we would be receiving New York Stock Exchange collateral in the future.

Q. Handing you Government Exhibit 21 already in evidence and Government Exhibit 22 and 23 for identification, would you first indicate if you recognize Government Exhibits 22 and 23 for identification and indicate what they are? A. Yes, Government Exhibit 22 is an offering ticket which creates a loan. This is dated February 26, [1973], with Tri-State Energy, Inc. being the borrower. It is for $475,000, payable on demand. It is recorded as a new loan and the rate of interest is 12 per cent. It continues to have the guarantees of Deaton, James and Rubin, and there is writing on it meaning that there is lien collateral of stocks and bonds and it is signed—not signed, but it is initialed by me, Ray Ludwig and it has Jerry Weiner's initials also.

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[289] Q. Did you ever receive any collateral from Tri-State other than the American Leisure Corporation stock? A. Yes, I did.

Q. Directing your attention—

Mr. Bender: Excuse me. Was that question him personally or the bank?

Ms. Neugarten: The bank.

A. The bank received it.

Q. Directing your attention to Government Exhibits 24, 25, 26, 27, 28, 29 and 30 for identification, do you recognize them? A. Yes, I do.

Q. Would you identify them by number, please? A. Government Exhibit 24 is a stock receipt [290] form issued by the Bankers Trust Company indicating that we had received as collateral 1000 shares of Allstate Life Insurance registered in the name of Tri-State Energy and 1000 shares of Allstate Life Insurance Company registered in the name of Owen J. Oons.

Q. That is a business record of Bankers Trust Company? A. Yes, it is.

Q. And Government Exhibit 25 for identification? A. Government Exhibit 25 is a stock certificate for 1000 shares of Allstate Life Insurance Company registered in the name of Tri-State Energy.

Q. To the best of your recollection, is this the stock certificate, this Government Exhibit 25, that Bankers Trust actually received? A. To the best of my knowledge, it is.

Q. And Government Exhibits 26 and 27 for identification, what are they? A. Government Exhibit 26 and Government Exhibit 27 are stock certificates for Allstate Life Insurance Company, each of them representing 500 shares of stock, and they are both registered in the name of Owen J. Oons.

Q. To the best of your knowledge, are these the certificates actually received by Bankers Trust Company? [291] A. Yes.

Q. And Government Exhibits 28 and 29 for identification? A. Government Exhibits 28 and 29 are stock powers both signed by Owen J. Oons and guaranteed by both the North American Planning Corporation and by the Chelsea National Bank.

Q. Are those signatures with which you had personal familiarity? A. No, they were not.

Q. From whom or from what company did Bankers Trust recieve these stock powers? A. They received the stock powers from Tri-State Energy.

Q. Directing your attention to Government Exhibit 20 for identification, or 30 for identification, rather. A. Government Exhibit 30 is a corporate resolution of Tri-State Energy, Inc., signed by C.W. Deaton and Leonard James and the signature is guaranteed by the Chelsea National Bank, and the resolution authorized Leonard James and/or C.W. Deaton to sign any and all papers necessary or caused to be arranged alone on Allstate Life Insurance Company stock.

[292] Q. And this is a photocopy, is that correct? A. Yes, it is.

Q. Does the signature of Mr. Deaton appear to you to be the signature of Mr. Deaton? A. Yes, it does.

Ms. Neugarten: At this time the Government offers Government Exhibits 24 through 30 for identification into evidence as Government Exhibits 24 through 30.

Mr. Bender: I have no objection, your Honor.

The Court: All right.

(Government Exhibits 24 through 30 were received in evidence.)

Q. Directing your attention to the stock certificates, Government Exhibits 25, 26 and 27 in evidence, were these received by the bank as collateral? A. Yes, they were.

Q. And do they bear any stamp of the kind that was on the American Leisure stock certificate? A. No, they do not.

Q. Do you recall at what point Bankers Trust received these three certificates as collateral? A. If I can use this as a reference.

Q. To what are you referring? A. Exhibit 24.

[293] The bank received the stock certificates as collateral on or about November 10, 1972.

Q. At what point in time would this Government Exhibit 24 in evidence be prepared? A. In theory it should be prepared on the day that the collateral is received.

Q. Was that in fact always precisely the case? A. Not always, but I would say most of the time.

Q. If there was a variation, by about how much was there a variation? A. One or two days, that is about it.

Q. Handing you Government Exhibit 31 for identification, do you recognize this document? A. Yes, I do.

Q. What is it? A. Government Exhibit 31 is a stock receipt form issued by the bank, dated December 6, 1972, representing that we received 100,000 shares of Management Dynamics, Inc. stock, and it was collateral for Tri-State Energy loan.

Q. Do you recall whether at some point Management Dynamics, Inc., stock was received as collateral? A. Yes, I do.

Q. Was it received? A. Yes, it was. It would have been on or about [294] December 6, 1972.

Ms. Neugarten: At this time the Government offers Government Exhibit 31 for identification into evidence as Government Exhibit 31.

Mr. Bender: No objection.

(Government Exhibit 31 was received in evidence.)

Q. Handing the witness Government Exhibit 32 for identification, 33A through Y for identification, 35 for identification, 36A through D for identification, 37A through C for identification, 38A and B for identification as well as Government Exhibit 39 for identification, and going back to them one by one and in order, would you please identify them? A. Government Exhibit 32 is a stock receipt form of the Bankers Trust Company dated December 19, 1972, and it says that we have received 175,000 shares of General Investment Corporation stock registered in the name of Tri-State Energy, Inc., and it is for collateral for a loan.

Q. And was there a time that Bankers Trust in fact received such shares of General Investment Corporation as collateral for Tri-State? A. Yes, it would have been on or about December [295] 19, 1972.

Q. And the next exhibit? A. The next exhibit is Government Exhibit 33A through Y, and they represent shares of stock of General Investment Corporation registered in the name of Tri-State Energy, Inc.

Q. And to the best of your knowledge, are these the actual stock certificates that were received from Tri-State Energy? A. Yes, they were.

Q. And the next exhibit, please. A. Government Exhibit 34 is a stock receipt form of Bankers Trust indicating that we have as collateral 50,000 shares of Satellite

Systems Corp. from Tri-State Energy, Inc., and it is collateral for a loan.

Q. Do you recall that such stock was in fact received by Bankers Trust as collateral? A. Yes, I do. It was either on or about January 19, 1973.

Q. And the next exhibit. A. Government Exhibit 35 is a stock certificate of Satellite Systems Corporation representing 50,000 shares registered in the name of Tri-State Energy, Inc.

[296] Q. And to the best of your knowledge, is this the actual certificate that Bankers Trust received? A. Yes, it is.

Government's Exhibit 36A through D are stock certificates for Marlin Investment Company registered in the name of Bachelor Investments and they represent 20 thousand shares of the stock.

Q. And to the best of your knowledge, are those actual certificates which were received? A. Yes, they are.

Q. And the next exhibit. A. The next exhibit, which is Exhibit 37A through C, are stock powers signed by Bachelor Investment and guaranteed by the Chemical Bank.

Q. Did Bankers Trust receive those documents from representatives of Tri-State? A. Yes, they did.

Q. Can you recall in connection with what stock that was? A. It would have been in connection with the Marlin Investment stock.

Q. And the next exhibit. A. Government's Exhibit 38A is a letter of consent to pledge and hypothecate securities signed by Bachelor [297] Investments in favor of Tri-State Energy, Inc.

Q. And 38B? A. 38B is a form of the General Stock Transfer Company.

Q. Do you recall whether Bankers Trust had communication with General Stock Transfer about any of this collateral? A. Yes. The Bankers Trust has attempted to get the collateral registered in the name of Tri-State Energy, Inc. because when we had received the stock as collateral we had been told that this stock was really Tri-State Energy stock and that it should be registered in their name and this form is the result of the bank's attempts to register the stock in Tri-State Energy's name.

Mr. Bender: If the witness is talking about someone who told him something somewhere without further identification, we would object to it and move that that answer be stricken.

The Court: Do you recall by whom you were told?

The Witness: Rubin or Deaton or both of them.

Q. And to what stock were you referring? A. This is in connection with the Marlin Investment stock.

Q. And then this document, 38B was received from [298] General Stock Transfer by Bankers Trust Company? A. Yes.

Q. And was it the normal course of Bankers Trust's business to receive such documents? A. Yes, if you attempted to get a stock re-registered and for some reason it couldn't be re-registered, this would be the format for the reply.

Q. And this was received in the normal course of Bankers Trust's business? A. Yes, it was.

Q. And Government's Exhibit 39 for identification? A. Government's Exhibit 39 is a form dated January 30, 1973 and it is a form of Bankers Trust that is used when

stocks are going to be re-registered and basically it says that the bank is instructing that the 20 thousand shares of Marlin Investment Company be transferred and registered in the name of Tri-State Energy, Inc.

Q. Is this a photocopy of the actual bank form? A. Yes, it is.

Ms. Neugarten: At this time the government offers Government's Exhibits 32 through 39 for identification, including in some instances subparts A through the letters previously indicated, in evidence, as the exhibits by those numbers.

[299] Mr. Bender: May I ask one question?

The Court: Yes.

Voir Dire examination by Mr. Bender:

Q. On Exhibit 38, Mr. Keating, I guess "A-B"—

Ms. Neugarten: A is the first page and B is the second page.

Q. How did you describe that document? A. 38A is a letter of consent to pledge and hypothecate collateral.

Q. Did that document also give the bank authority to sell it? A. Yes, it did.

Q. I wanted to make sure you weren't just limiting it to pledging and hypothecating.

Mr. Bender: Thank you, your Honor.

The Court: All right.

Mr. Bender: May I again ask another question?

The Court: Yes.

John Joseph Keating—for Government—Direct

By Mr. Bender:

Q. On Exhibit 34 for identification which you identified as a stock receipt where the bank received 50 thousand shares of Satellite Systems Corporation, there is some handwriting on the face of it, "From Benjamin." Do you [300] know who wrote that? A. No, I do not.

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[305] Q. Directing your attention back to the Allstate stock, which I think is indicated by Government's Exhibits 25 through 27, do you recall when the bank received it as collateral? A. The bank received the stock as collateral on or about November 10, 1972.

Q. Did it remain as collateral when the other loans that were dated after November 10th were made by the bank to Tri-State Energy? A. This stock was collateral for each and every loan Tri-State took from the Bankers Trust.

Q. So it was not limited to the first loan? A. No, it was not.

Q. What led to the bank receiving Allstate stock as collateral? A. It was delivered to us by either Deaton or Rubin or both of them for the bank.

Q. Had there been any request for it? A. This was part of the overall conversations that we have had with Tri-State from the beginning of the transaction that we wanted to get good marketable collateral that was not restricted.

So, this was part of that conversation. This was the result of it.

[306] Q. Was it in response to it? A. Yes.

Q. Do you recall who brought that collateral? A. Deaton or Rubin or both of them.

Q. Do you personally recall being told how Tri-State had obtained the Allstate stock which it was pledging as collateral? A. Yes.

Mr. Bender: May we have the conversation, your Honor, if there was a conversation, and with whom and when?

The Court: All right.

A. I recall in conversations with Deaton and Rubin that Tri-State had sold coal rights in their mine to this company so that they could get the stock as collateral.

Q. By "this company" do you mean Allstate? A. Yes.

Q. Were you told anything about the stock? A. That—

Q. And if so, by whom? A. We were told by Deaton or Rubin or both of them that the stock was in response to our request to get good marketable securities that was not restricted.

Q. Had you discussed the subject of collateral with [307] anyone from Tri-State before you received this Allstate stock? A. There were continuing conversations with Deaton and Rubin that we wanted to get not unrestricted stock, that our preference was to get New York Stock Exchange collateral, and we were promised on several occasions that we would be receiving unrestricted and New York Stock Exchange collateral.

Q. About how frequently before November 10th had you discussed this matter? A. Daily.

Q. With whom? A. With Deaton and Rubin.

Q. Did there come a time that you received stock of Management Dynamics as collateral? A. Yes.

Q. When again was that? A. (No response.)

Q. Is there a document you are looking for? A. Yes,

it is a stock receipt certificate which would have the date.

Q. If you look at Government's Exhibit 31. A. We received the stock of Management Dynamics on or about December 6, 1972.

[308] Q. And from whom did Bankers Trust receive it? A. Deaton or Rubin or both of them.

Q. Were you told anything by Rubin or Deaton about Management Dynamics?

> Mr. Bender: May we have, instead of leading, whether there was any conversation, with whom and when?
>
> The Court: All right.

A. On or about December 6, 1972 I had conversations with Deaton or Rubin or both of them, and again this was a—these conversations were continuous. You have to understand what was happening here. The people were coming into the bank almost on a daily basis, each time they would come in they would be describing various activities of the coal company and the conversations always evolved to the point of the collateral that we were holding and our desires to get New York Stock Exchange collateral.

This was presented to us, and actually it was not New York Stock Exchange collateral, it was our understanding that this collateral was marketable and it was not restricted.

Q. Were you told that? A. Yes.

Q. Did there come a time after you received Management Dynamics that you had another conversation [309] concerning it? A. Yes. I believe the date was December 15, 1972. Rubin came into the bank. It was a Friday afternoon and he indicated that they were going to swap

some coal rights and Management Dynamics stock, they meaning Tri-State Energy, for New York Stock Exchange collateral.

He wanted the stock released to him so that he could effect the swap. I didn't have the authority to make the withdrawal of the stock then and give it to Rubin. I went over to Ray Ludwig, I asked him for permission to release the stock. The permission was granted. I indicated to the general cage of the Seventh Avenue office that the stock was to be released and it was given to Rubin.

Q. Did Mr. Rubin tell you anything about his future intentions? A. Yes, he said that by Monday morning we would have New York Stock Exchange collateral in exchange.

Q. What day of the week was this conversation? A. It was a Friday.

Q. Did you receive anything from Mr. Rubin that following Monday? A. I received nothing at all.

Q. Do you recall talking to him that day? A. I don't recall specific conversations with him.

[310] Q. Did there come a time that you did talk to him again? A. I believe it was the following Wednesday. Rubin came into the bank and we received additional stock, but it was not New York Stock Exchange collateral. He indicated that the stock was marketable, that it wasn't restricted, that something had gone through with or fell through with the transaction that they were going to have with this unnamed stock exchange company, and that they had managed to get this other collateral, this other stock, in exchange for it.

Q. What was this other stock that you received? A. There would be a document—Satellite Systems Corporation stock.

Q. What is the date of that receipt? A. 1/19/73.

Q. I will check that. That's not correct. It would have been December 19, 1972 collateral, not the January, because it was December when he came into the bank. It was the General Investment Corporation's stock. It was 17,500 shares.

Q. What document is it that you are looking at to refresh your recollection? A. Government's Exhibit 32. It is a stock receipt [311] certificate dated the 19th of December.

Q. It was the General Investment stock that Mr. Rubin discussed that Wednesday? A. Yes.

Q. Did you make any response to Mr. Rubin? A. I was quite disturbed because I felt that it was a breach of confidence, that we were promised certain things and it just didn't transpire.

Q. Did you tell him that? A. Yes.

Q. Going back to that Satellite Systems that you just had there, did there come a time that you did in fact receive Satellite Systems? A. Yes. On January 19, 1973, on or about that date, we received 50,000 shares of Satellite Systems Corporation stock.

Q. Do you recell from whom you received it? A. It was either from Deaton or Rubin, I'm not sure which one.

Q. Did you ever receive any literature concerning it? A. Yes. Subsequent to this date, Deaton brought into the bank a clipping, a copy of a newspaper clipping from the International Herald Tribune, and the clipping was [312] a reflection of stock prices for a particular day, and circled on the clipping from the International Stock Exchange was bid and asked quotes of the Satellite Systems Corporation stock, stating that it was selling for approximately $20 a share.

Q. When you say "bid and asked," what do you mean? A. Well, on an over-the-counter security, there is two

prices, what somebody is—there is not the usual marketing in the New York Stock Exchange and a particular company or brokerage house, at least in the United States —I don't know how it works over in Europe—would make a market in the stock.

They would offer it at a certain price and somebody else might bid at it at a certain price.

Q. When Satellite Systems was brought in, did you have any conversation with the person who brought it to you? A. Yes. When the stock was brought into the bank, and I don't know who brought it in, it was Deaton or Rubin, the gentleman bringing it in was very happy saying, "Here is a stock, now you don't have to be asking all the time for New York Stock Exchange collateral, because while this isn't New York Stock Exchange collateral, here is collateral for you that is worth $1 million because we are at 50,000 shares, $20 a share."

[313] He says, "This stuff is readily marketable, it it not restricted, all the requests that you have should be more than satisfied by this particular piece of stock."

Q. Were you told how that Satellite Systems stock had been obtained? A. Yes, it was the same as each of the other pieces of collateral that we had received, and that was through the sale of coal rights to the mine that they owned in Kentucky.

Q. From whom did you receive the Marlin Investment Company stock? A. Deaton or Rubin or both of them, I can't recall.

Q. When you received it, were you told anything by the person from whom you received it? A. Yes. The Marlin Investment Company stock was registered in the name of Bachelor Investment Company. When the stock was presented to the bank, we had the pledge of stock

and hypothecation delivered with it, plus stock powers in the name of Bachelor Investment.

However, I was told that this particular stock was really Tri-State's property, and that we would be—we should register it in Tri-State's name because, again, Tri-State had obtained the stock through the sale of coal rights to this Bachelor Investment Company.

Q. So this hypothecation document which is 38A [314] there, what was its significance, what was its purpose? A. The purpose of the document was to give the bank the right to sell in between the time that we would take the stock in and when we would have it registered in Tri-State's name. In the event that we didn't have that document, then the stock would be worthless to us because there was nothing that would tie Bachelor Investment to the Tri-State loan.

Q. Were all of the discussions personal, face to face discussions with Rubin or Deaton held at Bankers Trust? A. No. There were a number of meetings that were held in the offices of Tri-State Energy.

Q. Did you go to Tri-State Energy by yourself or with anyone else? A. I went by myself once and I went with Ray Ludwig once.

Q. Do you recall whom from Tri-State was present? A. I recall meeting with Rubin and Deaton.

Q. Do you recall in whose office? A. I was in Rubin's office, and I believe I was in Deaton's office also.

Q. Do you recall when these meetings were? A. I'm not sure of the exact date, but I know it could be somewhere in the December to January time frame [315] basically because Rubin's office had all Christmas cards that he had received strung up on the wall on some string.

Q. Did you ever see them face to face anywhere other than their offices or your offices? A. I had lunch with them both, I know, on one occasion, that was some time, I believe, in October or early November, them meaning Rubin and Deaton.

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[332] Q. Did the bank generate internal documents regarding Tri-State as well? A. Yes, all correspondence or any written information received from a client was gathered and maintained in the credit file.

Q. How was the credit file actually physically put together? A. It was a binder. Any documentation that would come into the bank would have holes punched in it and attached to clips inside the binder.

Q. And it was the normal course of business for Bankers Trust to compose a credit file about a loan account? A. Any correspondence coming in on any borrowing account or commercial account would have a credit file.

Q. And the one that was made in this case, that is the Tri-State Energy credit file, that was made in the normal course of Bankers Trust business? A. Yes, it was.

* * *

[335] Q. Handing you a pasteboard bound folder, two sides, left and right, marked in toto Government Exhibit 49 for identification, do you recognize this compilation of documents? A. Yes. This is the credit file for Tri-State Energy Incorporated.

Q. Before coming to court today have you at some point coded or paginated the various documents in there? A. Yes, I have.

Q. Will you explain how you did that? A. I coded everything on the left side of the credit file A, numbered 1 through whatever the end is, and on the right side of the credit file was numbered B- and numbers going out after that.

[336] Q. And your sequential numbering system, for instance, on this right side document, B-1 is the top document and the numbers get higher as you get to the bottom of the folder, is that correct? A. Yes. It goes from B-1 to B-58.

Q. And on the left side here we start with document A-1 and go sequentially with the higher numbers at the bottom of the folder, correct? A. Yes, it goes to A-44.

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[338] The Court: 49 is received.

(Government Exhibit 49 was received in evidence.)

The Court. Let's proceed.

Q. Now, as I ask you questions about this document, I am going to refer to numbers according to your coded page numbers. When responding if you would also refer to the coded page numbers for purposes of the record, and so we all know where we are going— A. Okay.

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[339] Q. Directing your attention to document B-2A and also to B-3A, describe what B-2A is and hold it up to the jury. A. B-2A is the financial statement of Tri-State [340] Energy dated October 20, 1972, and it is prepared by Englander & Bernstein, CPA's.

Q. That is two pages, B2-A followed by B2-B and that is a report? A. And 2C.

Q. And 2C then is what? A. It is the balance sheet of the financial statement. B-2A and B-2B are notes to the financial statement.

Q. And B-2A and 2B are signed by Englander & Bernstein? A. Yes.

Q. And the date of the balance sheet? A. October 20, 1972.

Q. And the date of the report? A. The date of the report is October 20, 1972.

* * *

[353] Q. Turning to document B11A. A. Document B11A is a projection that was presented to us by Tri-State Energy, Inc.

Q. By whom? A. That I can't recall. It would have been Deaton or Rubin or perhaps both of them. The Tri-State Energy, Inc. projection shows the revenues that could be gathered predicated on different daily gross tonnages of coal which would be mined from the operation, and the projection covers the revenue, profit and capital expenditures which would be associated with each of the various assumptions.

Q. What significance, if any, did that document have to you? A. Well, just basically outlined that given the amount of coal that Tri-State Energy, that they could generate a substantial profit from their operations under a number of different alternatives, starting with 500,000 tons or 500 tons a day, up to 5,300 tons a day.

Q. Document B—strike that.

About when did you receive this projection? A. It would have been on or about the same time that the balance sheet was presented to us.

John Joseph Keating—for Government—Direct

Q. You testified that was October 27th? [354] A. Yes.

Q. Document B45? A. Document B45 is a map that was presented to us by Tri-State of their coal mine.

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[355] Q. What were you told? A. That it was a subsidiary of Tri-State Energy and that they had tremendous reserves of natural gas located in Tennessee.

Q. Did they quantify those reserves in any way? A. Yes.

There was an outline or synopsis that was presented to us. I believe there were 330 billion cubic feet of natural gas with a recoverable value of $250 million.

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Q. Directing your attention to Document B7. A. Document B7 is a letter from American Leisure Corporation to William R. Rubin dated October 27, 1972 signed by Jack Lipschitz, President.

Q. Do you recall how you got this letter? A. Yes, it was presented to us by Rubin or Deaton or both of them.

Q. Do you recall approximately when? A. It would have been in late October, early November 1972.

Q. Did you discuss it with anyone? [356] A. Yes, I discussed it with Mr. Rubin.

Q. What was the substance of that conversation? A. Well, it was in connection with the American Leisure Corporation stock of 400,000 shares that we had received when the loan was first put on. Mr. Rubin had indicated that the shares—that the restriction, the stamp that was on the face of the shares would be removed at some future date, and basically the letter was demonstrating that this was going to happen.

Q. Did that ever happen? A. No, it did not.

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[365] Q. Turning to document A-19. A. Document A-19 is a projection that was prepared by Mr. Rubin and delivered to me by Mr. Rubin.

Q. How do you know it was prepared by Rubin? A. He told me he prepared it.

Q. About when did he deliver it to you? A. It was some time after the initial loan was made, October, late October, early November 1972.

Q. Did you have any discussions with him concerning it? A. Yes. This was the—as far as I was concerned, this was one of the most important documents that I had received from the company. What it did is it gave me an analysis of when the company was going to generate cash from the sale of coal and how much was going to be generated and when the—what the cash would be used for and what the net figure or net cash flow of the company [366] was so that that could be used to retire any bank loans that had been made.

Now, the document indicates that sales would be made of $120,000 in December 1972, 240 in January of 1973, and 180 in February of 1973.

Now, the sales that are associated with this were $300,000 from a Continental Coal Corporation and $240,000 from Repoca Resources.

Q. How is that indicated on the document? A. I've got notes on the document which indicate that.

Q. What are those notes, if you would read them? A. Three hundred thousand or three hundred "M" which means thousand, C/C/C, 240,000 R/R.

John Joseph Keating—for Government—Direct

Q. I take it C/C/C is Continental Coal? A. That's right.

Q. And R/R is Repoca Resources? A. That's correct.

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[370] Q. And I believe you had just explained what CCC and RR were. A. Right. As I stated, this was a projection which Rubin had prepared for us indicating how Tri-State was going to generate sufficient cash to pay off our loans and the projection indicated that $540,000 would be generated in the December 1972 to February 1973 period. There would be equipment purchases of approximately $200,000 for a net cash flow of $340,000. The way it was explained to me by Rubin, this was on a specific basis. In addition to this there were other items that were outstanding that may not necessarily happen at this particular [371] point. He wasn't putting it in his firm projection. But he did indicate that the firm had been in negotiations on other fronts besides just the sale of coal to these two companies, one of which was—he stated there would be $200,000 received through down payments for the sale of gas in place in Tennessee, and the institution of driling programs for the exploration of reserves in Scott and Morgan Counties, Tennessee.

He stated that this particular money will be coming from a company called Ohio Gas.

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A. And the last part of the projection, that outlines that it is the opinion of the management that the cash flow generated from operations through February 1973 will be more than sufficient to meet a monthly [372] amortization schedule of $100,000 per month.

John Joseph Keating—for Government—Direct

In addition to the information that I already stated there is a mention in the projection of a long term export contract from Roland-Werkstatten, which was a German company that wanted to import coal from Tri-State Energy.

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[375] Q. Continuing with Document A9, what if any [376] significance had this document to you as a lending officer? A. At that time this was the most significant document that I had received. When we made the loan to Tri-State we made the loan with the overall operations of Tri-State; the sale of coal, the sale of natural gas being their business.

This was how cash was going to be generated to repay the loan. This was our primary source of repayment and this document indicated to us what, how and when they were going to repay the loan.

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[378] Q. Directing your attention to Document A18. A. Document A18 is a Dun & Bradstreet report on Tri-State Energy, Inc. and it is dated November 30, 1972.

Q. How did it come to be in the credit file? A. It was ordered on the corporation. It was standard policy to order something like this on an account.

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[379] Q. Turning to document B47A. B47A is a description of the lease on the coal properties in Kentucky.

Q. How did you come to have it. A. This was presented to me by Rubin, Deaton or both.

John Joseph Keating—for Government—Direct

Q. Do you recall if you had any discussion concerning it? A. Well, I had discussions. As far as the substance of the exact conversation, I can't recall. Basically it was an indication of overall strength of the company, how much coal they had, and an outline of where the operations were.

[380] Q. Turning your attention to page 47C, which is to say B47C of that document. A. Yes.

Q. Do you see a summary? A. Yes. The summary indicates that—

Q. Could you, rather than summarize it, would you read it to the jury? A. "In summary, the three major seams, the Amburgy, the Whitesburg and the Hazard 4, are all high range coals with low sulfur and high BTU characteristics. These traits make the coal especially attractive to metalurgical coking markets, and the low sulfur can demand a premium price in the increasingly pollution conscious steam market of the north. The three other seams, the Hazard 5A, the Amburgy Rider and the Elkhorn 3 are not calculated as part of the reserves. Rather, they serve as a compensatory factor to allow for error in the calculations of the other reserves."

Q. Directing your attention to page 47E, that is B47E of that document, do you see an indication at the bottom, a statement of the total reserves? A. 24,070,547.

Q. Looking again to page 47F, do you see a figure for total reserves? A. Yes, 24,070,547.

[381] Q. Turning to page 48B, do you see a description of the Whitesburg seam? A. Yes.

Q. Would you read the first paragraph of that description? A. "Thickness ranging from 30 to 45 in avergaging 36 inches. The Whitesburg coal is good metalurgical coal and high grade blending steam coal. It is an analysis"—

Q. And then read the numbers. A. BTU 13,500.8 per-

cent maximum, around 8 percent, fixed carbon 52.2 percent, vol. matters 35.2 percent, FSI 5.

Q. Turning to page B50. A. B50 is a letter from Otto E. Sebold to Tri-State Energy dated September 20, 1972.

Q. Does it state the present value of certain coal? A. Yes. He states that it is his opinion that the present value of the coal is $3 per ton in place.

Q. That price, $3 a ton in place, do you recall whether that is the same or different as you discussed with respect to that October 20th balance sheet? A. Same amount.

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[382] Directing your attention to B48A, B and C, as well as B50. A. All right.

Q. Did you have any discussion concerning those documents? A. Yes. We had discussions on the size of the reserve, the strengths. My basic impression, after the discussions and the discussions would have been with Rubin or Deaton or both of them, I don't recall, is that the Tri-State Energy had tremendous reserves of coal. Most of [383] these reports added to—we are given as substance that they did have good reserves of coal and that's the basic outline in what these documents contained.

Q. Directing your attention to document B29. A. Document B29, it appears to be a letter from Continental Coal Corporation to Tri-State Energy, Inc. dated December 14, 1972.

Q. How did you come to have that? A. It was given to me by Rubin, Deaton or both.

Q. Did you have any discussions concerning this? A. Yes. This was presented as further authenticity of the projections that had been presented to us previously. The letter speaks about buying coal at $9.25 per ton. This was

just further verification that the sales that were indicated in those projections were going to materialize.

Q. Directing your attention to document B28, the back side of that document. A. B28 is a copy of a cable or a Telex to Mr. Deaton from Ian J. Ward.

Q. Are you referring to the front, back or both of B28? A. I am referring to the back. The date of the cable is December 13, 1972 and the cable states that, "This will confirm our interest in purchasing approximately 750 [384] short tons per day of your Neon Kentucky Coking Coal per your analysis of September 5, 1972. It is my understanding that you require U.S. dollars 12, per short ton loaded on rail cars at Neon. I am awaiting confirmation of rail rates and loading facilities and will revert to you as soon as possible."

Q. Do you recall how you got document B28? A. It was delivered to me by Rubin or Deaton or both of them.

Q. Do you recall when? A. It would have been in December or January, December 1972 or January of 1973.

Q. Did you have any conversation regarding that? A. Yes. It was just, again, a further indication of the overall story we had been receiving that the coal was going to be sold.

Q. Documents B52, B53, B54 and B55. A. Document B52 is a letter from Rapoca Resources to C. W. Deaton, Tri-State Energy Corporation, dated November 28, 1972. The letter states that "We are pleased to submit the following purchase bid on our coal located at Neon, Kentucky. $12 per ton, 20,000 tons graded 2 in-0 in loaded in car at Neon, Kentucky per analysis of Standard Laboratories, Inc. Delivery of the above tonnage to begin [385] no later than January 15, 1973."

Q. And B54 and 55? A. B54 is a domestic bank checking on Rapoca Resources, Inc., and it is dated November

29, 1972. It was done with the 53rd Bank. It doesn't say where the bank was located, but the checking outlines the borrowings that they were—that that bank was loaning to Rapoca Resources. It indicated that it probably was a substantial company because they were loaning them $400 thousand unsecured and 3.5 million dollars secured.

Q. Does the document indicate the reason for this bank check? A. It says "Bankers Trust Company has been asked to lend against a commitment from subject."

Q. From that, what do you understand to be the reason? A. From the analysis here is that we were probably approached to lend against the actual sale of coal that would be transmitted between Tri-State Energy and Rapoca Resources.

Q. Directing your attention to document B23. A. Document B23 is a letter from a German company, Roland-Werkstatten, to Tri-State Energy, Inc. to the attention of Leonard James, dated December 3, 1972.

[386] Q. Do you recall how you obtained this document? A. It was presented to me by Rubin, or Deaton, or both of them.

Q. Is that the same company that is mentioned in the projection you discussed earlier? A. Yes, it is.

Q. Did you have any discussions concerning this document B23? A. Yes. Tri-State was going to sell the German company coal, and the method of sale was to be by a letter of credit. A letter of credit is basically an instrument that facilitates international trade.

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[389] Q. Directing your attention to document A11A, through A12. A. These documents concern a proposal of

natural gas [390] sales to Anheuser Busch. Where did you say to end off on?

Q. Through A12. A. It is just an analysis of what they could make and how much gas Anheuser Busch would be using.

Q. How did you come to get these documents? A. These were delivered by Rubin or Deaton or both of them.

Q. Did you have any discussion concerning this transaction? A. Yes, it was again part of the overall, the other prong approach of Tri-State Energy. It was one hand coal, the other part natural gas, and this particular document was used as an example of what plants they had, who they were talking to and again, as a further instance of how they would be able to generate cash to repay loans.

[391] Q. Do you recall being told anything about the transaction with Anheuser-Busch? A. Yes. Apparently the General Oil & Gas who was the subsidiary of Tri-State, who owned the natural gas fields in Tennessee,—and I am not sure of the exact terminology at this time—it's either that fields were dedicated or they were not dedicated. It had something to do with that. Basically Anheuser-Busch, if they bought the gas from General Oil & Gas, they could buy it cheaper than from other sources. So it would be a good deal for Anheuser-Busch and a good deal for Tri-State.

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[395] Q. Handing you Government Exhibit 47 in evidence, does it contain any information regarding General Oil & Gas? A. Yes, it states that "General Oil & Gas is a subsidiary of Tri-State Energy and it has approxi-

mately 330 billion cubic feet of natural gas which, at today's prices, would have a recoverable value of $250 million."

* * *

[396] A. Yes.

Q. Advancing to the next paragraph, the third full paragraph on the first page, would you read the first and second sentence? A. "We have advanced 475,000 on paper submitted by 750 in marketable securities as lien collateral. In the near future, we expect the lien collateral to be replaced by guaranteed letter of credit which will be opened in our favor to support the loan."

Q. I believe you testified earlier that there was a time when a series of bounced checks or overdrafts were experienced in the Tri-State account. A. Yes.

Q. Did you discuss those bounced checks with anyone? A. Yes, I discussed it with Rubin on several occasions.

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Q. Do you recall the substance of those conversations? A. Yes, I kept on telling Rubin that it was [397] senseless to be sending out checks if he didn't have any money in the bank because I wasn't going to pay them. He indicated that Deaton had the checkbook, Deaton was writing all of the checks and that he was really unable to control him.

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[403] Q. Directing your attention back to the credit file, to page B22 and B24. A. B22 is a letter from C. W. Deaton to Onyx Investment Limited in Montreal, dated January 20, 1973.

B24 is a listing of mining equipment.

John Joseph Keating—for Government—Direct

Q. Do you recall what these documents—first of all, do you recall how you obtained these documents? A. They were delivered to me by Rubin or Deaton or both of them.

The documents were in connection with a loan that Tri-State was trying to get from Onyx Investments Limited, and the loan was for $2.25 million, and it would cover the purchase of mining equipment, plus working capital for the company.

[404] Q. And did you discuss this letter with anyone? A. Yes, I discussed it with Rubin or Deaton or both of them.

Q. What relation, if any, did the document B24 have to the letter B22? A. That was the equipment listing that the loan was covering.

Q. And this is the same company from which you had received an inquiry, you earlier testified? A. Yes.

Q. And were you told how this equipment was to be paid for? A. Yes, the loan basically was to be gotten by, again, a swap of coal and this was the standard practice that Tri-State had used to get the securities or the stocks that we had as collateral and it was also part and parcel of this particular transaction.

Q. Did you have any reaction to Tri-State's suggestions that it was swapping its coal reserves? A. I figured that they had plenty of coal, that it was better to get cash than to sit on reserves, the theory being that half a pie was better than a whole pie if you weren't going to get anything.

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[410] Q. Directing your attention to document B58. A. This is a copy of a newspaper article from the International Herald Tribune dated January 22, 1973.

Q. How did the bank come to have this copy? A. Deaton brought it into the bank. Basically, it was an indication that the Satellite Systems Corporation stock that had been brought or given to the bank as collateral [411] was in fact trading at 20 to 20.50 dollars a share as indicated in the newspaper clipping.

Q. Directing your attention to Document A7. A. A7 is a memo from me to William Powderly dated February 2, 1973. The document indicates that "Pursuant to a phone conversation with Ray Ludwig, the following is a list of the side collateral which we have in support of our loan to the subject," meaning Tri-State Energy.

Q. Do you recall what occasioned your sending this memorandum? A. Not specifically.

I know there was a conversation with Powderly on the account and, you know, from Ludwig, he wanted Powderly to know what collateral we had and which of the collateral was restricted and which was marketable.

Q. Who was Mr. Powderly? A. He was vice president in Loan Administration who had concurrent responsibility for the office above a half million dollars.

Q. On an organizational chart, what relationship did he bear to Mr. Ludwig? A. He was his superior for credit purposes.

Q. And for credit purposes, would include loans; is that correct? [412] A. Loans, right.

Q. And Document A2? A. Document A2 is a memo from Bill Powderly to me dated February 5, 1973 on Tri-State Energy, Inc. and the memo asks, "With respect to the stock collateral we hold, do we have complete documentation including our standard form of resolution for transfer of each issue? Please check this with Mr. Miller and send me a short memo."

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Q. Directing your attention to Document B38. A. Document B38 is a checking that was performed on All States Life Insurance Company, dated February 6, 1973.

Q. And that is an internal bank document? A. Yes, it is.

Q. Does it indicate for whom this checking was performed? [413] A. It was requested by me.

Q. Your initials are on it? A. Yes.

Q. How did they come to get there? A. I signed it.

You know, I don't recall specifically what caused me to get this particular investigation performed, but it was performed. I don't know what instituted it.

Q. And when the document reflecting the checking was completed, it was sent to you and you initialed it? A. Yes.

Q. Is that true for B39? A. Yes.

Q. And the date at the top? A. February 6, 1973, checking on General Investment Corporation.

Q. What date does that reflect? A. That would be the date that the investigation was either made or typed out.

Q. And document B51? A. B51 is an investigation on Marlin Investment Company dated February 6, 1973.

Q. Is it again requested by you? A. Yes.

[414] Q. As indicated by your initials? A. Yes.

Q. And document B35B. A. B35B is a checking on American Leisure Corporation dated February 6, 1973, and it again contains my initials.

Q. And 35A? A. 35A is a bank checking on American Leisure Corporation dated January 16, '73 and it was requested by Mr. Ludwig and me and it indicates no accounts with the exception of a closed account at Chemical Bank.

Q. Directing your attention to document A44. A. A44 is a letter dated February 7, 1973 from me to the International Stock Exchange in London asking for information that might be available on the stock of Satellite Systems Corporation, including the current trading price and whether or not it is actively traded.

Q. And what date does that bear? A. February 7, 1973.

Q. This series of checkings, both on the bank forms and your letter, was there a reason why you requested them or did them? A. Well, there was a reason. At this time I don't recall why I instituted the checkings. I have opinions on why I did. There were so many things going on at this [415] particular time.

Number one, it was—

> Mr. Bender: Your Honor, may we have an answer to the question, a responsive answer, rather than an exposition?
>
> (Question read.)

A. Yes, but I don't recall at this time why I instituted the checkings.

Q. Had you any concerns at this time? A. Yes, I did. At that time the account had been overdrawn. Many of the things that were indicated in the projections had not transpired. It was subsequent to this party that Ludwig was present at that certain information was stated that—

> Mr. Bender: I object to this. I knew we were going to try to get this in the back way, particularly after we had that side bar conference. That is why I objected.

The Court: Yes. You have not been able to testify as to what transpired at that party, so please do not refer to it.

A. Many things were happening that were of concern to me at that time and all of the things which I had stated and basically the lack of performance to date by the company in meeting its projections.

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[419] Q. Directing your attention to Government's—the credit file, page A25. A. A25 is a request for a D & B report on general [420] investment dated February 9, 1973.

Q. By D & B, do you mean Dun & Bradstreet? A. Dun & Bradstreet.

Q. For A35, what is that? A. A35 is a request for Dun & Bradstreet report on Sagor Corporation.

Q. And A32? A. A32 is a Dun & Bradstreet Report on [Marlin] Investment Co. dated February 12, 1973.

Q. The A36? A. A36 is a request for a Dun & Bradstreet report on Satellite Systems Corporation dated February 12, 1973.

Q. No that's the date of the request, is that correct? A. Right.

Q. Then A37? A. A37 is the Dun & Bradstreet report on Satellite Systems Corporation dated February 12, 1973.

Q. Now, both [Marlin] Investment Co., the subject of A32, and Satellite, those were companies whose stock was collateral for this loan? A. Yes, it was.

Q. Did there come a time that you received, you individually received the Dun & Bradstreet on Satellite, [421] document A37? A. Yes.

Q. Do you recall about when you received it? A. February or March, 1973.

Q. Did you do anything in response to it? A. Yes. After receiving the report, I called a Mr. Benjamin who was listed in the report as a principal of the corporation.

Q. In response to your call with Mr. Benjamin—strike that.

Did you have a conversation with Mr. Benjamin? A. I had a conversation with Mr. Benjamin.

Q. Then in response to that conversation with Mr. Benjamin, did you do anything? A. Yes, I called Mr. Rubin.

Q. Did you have a conversation with Mr. Rubin? A. Yes. The substance of the conversation with Mr. Rubin basically revolved around the conversation which I had with Mr. Benjamin.

Q. Can you tell us what you told Mr. Rubin as you recall it and what Mr. Rubin told you? A. I told Mr. Rubin that Mr. Benjamin had said that this stock on Satellite Systems Corporation was restricted stock. There was an investment letter attached to the stock [422] and that it could not be used as collateral for any loan. Mr. Rubin told me that that is crazy, that's been defrauded because they had traded coal rights for the Satellite Systems stock, and that he was going to have his attorney look into the matter.

Q. Did you ever meet a William Hamilton? A. Yes, I did.

Q. With whom did you meet Mr. Hamilton? A. I met Mr. Hamilton with Mr. Rubin in the branch at 550 Seventh Avenue.

Q. That is the Bankers Trust Branch? A. Yes.

Q. Do you recall when that was? A. It would have been in January or February somewhere in that area of 1973. I am not certain of the exact time.

Q. Do you recall what conversation you had with Mr. Rubin and Hamilton? A. Yes. I had a conversation with both of them and I am not sure exactly what stock it resolved around. It either was in reference to the Marlin Investment Co. stock or it was in reference to Satellite System. At this time, I am not sure which one it was in reference to.

Q. But it was one of the two? [423] A. Yes, but the substance of the conversation was that Mr. Hamilton represented himself as being the attorney for Tri-State Energy and that he indicated that they had been defrauded by either Bachelor Investments or by Benjamin of Satellite Systems because they had traded stock and they did not have any knowledge that any of this stock was restricted and that it was crazy. He was going to institute a lawsuit.

Q. Directing your attention to documents A26 and 27. A. A26 is a request for a Dun & Bradstreet on Charter Financial Limited dated February 12, 1972 and A27 is a letter dated February 8—1973, the date of the Charter Financial request for Dun & Bradstreet. It should be 2/12/73. Document A27 is a letter to the manager of Barclay's Bank, 120 Broadway, New York, dated February 8, 1973, initialed by me asking for information on Charter Financial Limited.

Q. Document A24? A. Document A25 is a Dun & Bradstreet report on American Leisure Corporation dated February 13, 1973.

Q. And document A4? A. Document A4 is a memorandum dated February 22, 1973 from me to Emanuel Miller, Associate General Counsel of [424] Bankers Trust on Tri-State Energy. The substance of the memo asks that for him to examine contracts covering the mineral

royalty rights of the subject firm on properties in Kentucky, it's to see if we could take an assignment and use the mineral royalty rights as collateral for our loan.

[425] Q. Is there anything attached to that memorandum? A. It is documents A5A and 5B and 5C and 5D, 5E, 5F and 5G, which is basically a copy of the rights that Tri-State had to the coal properties.

Q. Now, how would you have gotten these attachments, that is the copies of the rights to the coal properties. A. It was given to me by Rubin or Deaton or both of them. Q. There came a time when a demand note was executed, is that correct? A. That's correct.

Q. That was February 26, 1973? A. That's right.

Q. At that time, what were the options that you and Mr. Ludwig had with respect to this loan? A. We would call the loan at that time, we could let it—there were, I believe, two notes that had already matured, that had come due, and there were two notes that had yet to mature. We could just let the notes be carried on a past due basis and wait for whatever events to happen, or we could take everything and put it into one neat package, that is the demand note so that there would be one instrument of debt representing all of the $475 thousand in loans.

Q. And was there a reason for making the choice [426] you did? A. Normally that was the policy of the bank, when there was a problem loan to put it on a demand basis.

Q. At that time, had you any expectation regarding whether or not the note would be repaid? A. I still thought that the loan would be repaid.

Q. Why was that? A. Well, from conversations at that time when the note was signed with James, and

those conversations reverted around several factors that he had brought to my attention on that day.

Number one, he said that there was a coal strike in Kentucky, that there was coal in sidings in cars at the—waiting to be shipped. He indicated that they were approaching the Bank of New York and First National City Bank's mineral group to seek out a loan.

In addition to that, they were looking for an SBA loan from some bank in New Jersey. It was just the litany of events that were described to me which indicated that, yes, they were having problems, but they would extricate themselves from the problems and repay the loan.

Q. And this was on February 26, 1973? A. Yes.

Q. Did he tell you anything about the coal in [427] Kentucky? A. He said that it was in side cars or railway cars that couldn't be shipped because there was a coal strike.

Mr. Bender: Excuse me, your Honor, I take it you are taking this subject to connection.

The Court: Yes.

Mr. Bender: As far as Rubin is concerned.

Q. When was the last time you saw Mr. James? A. That day, until today or—

Q. Have you seen him today? A. Yes. He was in the courtroom.

Q. Have you seen him anywhere else today? A. He was in the hall speaking to Mr. Rubin.

Q. Directing your attention to document B16. A. 16 is a subpoena from the United States Department of—not a subpoena, an inquiry from the United States De-

partment of Justice, dated February 23, 1973 asking for information on Intercommunications Systems, Inc. North American Mutual Funds, Tri-State Energy Company and C. W. Deaton, and the inquiry was received by Bankers Trust Company.

There is a time stamp on it on February 28, 1973.

Q. So that was two days after the demand note? [428] A. Yes.

Q. Directing your attention to document A1. A. A1 is a demand letter that was sent to Mr. Leonard James on March 5, 1973 with copies to Mr. James, Mr. Deaton and Mr. Rubin. The document states that "This will serve as your notice that unless our demand note for $475 thousand dated February 26, 1973 is repaid in full within three business days of the date of this letter, we will commence selling the collateral we hold without any further separate notice."

Q. Do you recall whether there was any response to this letter? A. No, I don't recall.

Q. Does it indicate carbon copies were sent? A. Yes.

Q. To whom were they sent? A. Mr. James, Mr. Deaton and Mr. Rubin.

[429] Q. Why were carbon copies sent? A. Because they were the guarantors of the loan.

Q. To the best of your knowledge, was that loan repaid in full within three days? A. No, it was not.

Q. Do you know for certain it was not? A. For certain.

Q. To the best of your knowledge, has it ever been repaid? A. No. I believe it was charged off by the bank.

Q. Apart from these credit checks that you had performed in January and February of 1973, up to December 6, 1972, that is going back several months, had you done

any checkings with third parties, that is anyone other than the three people from Tri-State? A. Well, there were daily litigation checks on the individuals that were performed to find out if they were being sued by anybody.

Q. What was the result of that check? A. They came up clear.

Q. Did you do anything else? A. I don't believe that I did at that particular time.

Q. Did you pull Dun & Bradstreet on the company [430] itself? A. Dun & Bradstreet was pulled also as a matter of course by the credit department, so that would have been extra financial information that would be ordered. That didn't have to be done at my direction.

Q. Did you ever do any checking with regard to the accounting firm? A. Yes, the accounting firm was checked out also to find out what kind of accounts that they were auditing or doing work for within Bankers Trust or any of the other banks in New York City.

Q. This checking, rather the degree and extent of this checking, was this normal or abnormal in your experience? A. It wasn't abnormal because of the nature of how the account had come into the bank.

Q. What do you mean by that? A. Well, the account came to Ludwig, who was the branch manager, and he had known Rubin as an accountant with an accounting firm called Fred Landau & Company in the past. It was normal, under the circumstances, that if you had a very good reference and you were very, very familiar with the people that were involved in this thing, that you wouldn't do the amount of detective work [431] that you would if something just walked in the door.

Q. So was the checking for someone who was known to the bank different than if someone had walked in off the street asking for a car loan, say? A. Yes.

Q. And the reason? A. Because of our knowledge of the individual and respect for his judgment.

Q. To the best of your knowledge, had Mr. Rubin had prior dealings with the bank? A. Yes. He was known to Ludwig from his days as an accountant with Fred Landau & Company.

Q. Directing your attention to document B26-A. A. B26-A is a memorandum on Tri-State Energy Company describing their operation, both in the coal and in the natural gas areas.

Q. From whom did you get this document? A. This would have been received from Rubin or Deaton or both of them.

Q. Turning to the second page of this document, do you see a discussion of General Oil & Gas? A. Yes. There is an analysis of their operation with specific reference to the amount of natural gas that they had and the amount of dollars which they believed [432] could be recovered from the natural gas.

Q. Do you see a sentence in the middle of that second paragraph commencing "General also has"? A. Yes.

Q. Would you read that please, that sentence? A. "General also has leases and options to purchase the natural gas located under approximately 250,000 acres in Scott and Morgan Counties, Tennessee. Attached is a map showing all existing pipeline and gathering systems in the area in the proposed Morgan and Scott County System."

Q. Before that, do you see immediately before it a sentence with a certificate of convenience? A. Yes.

Q. Would you read that? A. Would you repeat that?

Q. The sentence immediately preceding the one you just read. A. "General received a certificate of convenience and necessity from the State of Tennessee to operate as a public utility in the transmission transportation and pur-

chase and sale of natural gas and byproducts thereof. Attached release from Public Service Commission."

Q. Directing your attention to document B31. [433] A. Document B31 is a copy of that Tennessee Public Service Commission announcement stating that "General Oil & Gas, Inc., CCN, to operators of public utility in the transmission, transportation and purchase and sale of natural gas and the byproducts thereof."

Q. Were you ever told anything else regarding this certificate of operation? A. No, I was not.

Q. Directing your attention to document B34-A. A. Document B34-A is a copy of a printed financial statement in writing of American Leisure Corporation and subsidiaries as of September 30, 1971.

Q. Do you know how you received this document? A. It would have been presented to us by Rubin or Deaton or both.

Q. Does that apply to the whole series which is B34-A through B34-E? A. Yes, it does. It is all part of the same financial statement.

Q. Document A31-A? A. A31-A is a Dun & Bradstreet report on Insurance Industries, Inc., dated July 26, 1972.

Q. Do you recall how you came to receive that? A. That was ordered by the bank, but I don't know [434] why it was done.

Q. Document B41-A. A. Document B41-A is a financial statement prepared by Dale W. Ogden, certified public accountant, on General Oil & Gas, Inc. as of July 31, 1972. The letter of transmittal is dated August 25, 1972.

Q. Do you know how you came to receive it? A. It would be delivered to the bank by Rubin or Deaton or both of them.

Q. Do you recall at what point? A. Early October, November, 1972.

John Joseph Keating—for Government—Cross

Q. Directing your attention to document A3. A. Document A3 is a subpoena from the United States District Court, Southern District of New York, directed to Bankers Trust Company and it was dated the 14th of March 1973, and it asks for all records, internal memoranda, correspondence and documents relating to any loans to Tri-State Energy Corporation for the years 1972 to the date hereof.

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(Cross Examination)

[480] Q. You testified that the first note reflected a loan of $50,000 from the bank? A. Yes.

Q. This actually was more or less an unsecured loan for the $50,000 wasn't it, based pretty much upon the favorable background that Mr. Rubin had with the bank? A. The note itself was an on-paper note.

Q. Excuse me, just answer the question. You will have a chance to explain later. I think we will get along further if you are responsive to the question. A. It was not an unsecured loan.

Q. Did you ever indicate that this first $50,000—did you ever indicate to any agent or any attorneys or anyone else that this was an unsecured loan for $50,000 where subsequently some security in the form of this restricted stock was given to support the events? A. I don't know what I said to agents. I do know that that note was signed on the 19th and on the 20th it was booked and when it was booked we had American Leisure stock. Therefore, the loan was not unsecured.

Q. Was the money given before the stock was received? A. The stock was received on the 20th of October and that is when the loan was made.

[481] Q. Is that your best recollection? A. To the best of my recollection.

Q. That is your best recollection, that you never said to anyone that the first note was unsecured but nevertheless the American Leisure restricted stock was then sent in to support the events? A. The loan was made with American Leisure stock as collateral for the loan.

Q. Could you tell us, looking at your credit file—maybe you can help us—is there anything here which indicates that the American Leisure stock was actually received by the bank on October 20?

Do you know without looking at that, sir, what the basis of your information is? A. The S.R. ticket which was one of the exhibits is dated the 20th of October, to the best of my recollection.

Q. Is that the only thing that you go on, the fact that it was dated October 20? A. Yes.

Q. But nothing else? You have no independent recollection of that? A. I have independent recollection also.

Q. What is that based on? A. That the loan was made secured by American [482] Leisure stock.

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[580] Q. Would you be good enough to tell us when the bank received American Leisure stock, according to the stock receipt? A. That one isn't here.

Q. I can't hear you? A. That one isn't here. I know there is one. I need the number. According to the stock receipt we received the American Leisure Corporation stock on or about 10/20/72.

Q. On or about what date, sir? A. 10/20/72.

Q. That was the stock receipt which is the form of stock certificate issued by the bank that you testified to before? A. This is the stock receipt ticket.

Q. That is exhibit— A. 10.

Q. When did you receive Allstate stock? That was [581] 1000 shares I think you testified, in the name of Tri-State and 1000 in the name of Albert Combs? A. Yes. This collateral was received on or about November 10, 1972.

Q. That certificate is what number? A. 24.

Q. When did you receive the General Investment stock? A. General Investment Corporation was received on or about December 19, 1972.

Q. That again is from the stock receipt which is Exhibit 31? A. 32.

Q. Excuse me. The stock receipt Exhibit 31 is the receipt of the stock of Management Dynamics? A. Yes, it is. That was received on December—on or about December 6, 1972.

Q. Exhibit 34 is the stock receipt, is it not, of the bank for the receipt of the Satellite Systems stock and that is dated January 19, 1973? A. Yes, it is.

Q. When was it, about what time you received the stock certificate of Marlin Investment? That is what you testified about this morning. A. It would have—I can't give you an exact date. [582] It would have been before January 30.

Q. You testified today it was some time in January, before January 30? A. That's right.

* * *

[Redirect Examination]

[591] Q. Addressing your attention to Government Exhibit 65, does it indicate collateral received on the Tri-State Energy loan? A. Yes, it does.

Q. Does it indicate dates next to that collateral? A. Yes, it does.

Q. What were those dates? What did you intend those dates to mean when you prepared that document? A. It would have been the dates that we received the stock.

Q. And was this document accurate at the time you prepared it? A. To the best of my knowledge, it was.

Q. And what is the date listed next to Marlin Investment Company? A. January 30, 1973.

* * *

[593] Q. I believe on cross-examination you characterized this as an on-paper note, is that correct? A. Correct.

Q. What did you mean by that? A. That is the form that is utilized by the bank. That was the jargon that was utilized. It is a yellow form normally associated with an unsecured loan, [594] although this particular loan was not. The reason that that note was utilized rather than a secured note form was because we believed the primary source of repayment was going to come from the operations of the coal mine and the gas fields and the collateral that was taken at that time was in what we call side collateral or lien collateral, and that was basically under a security agreement which was given to us in connection with the loans.

Q. Now, the loan itself, the first loan, Government Exhibit 1 is dated October 20, is that correct? A. Correct.

Q. And it was effective that day? A. Yes, it was.

Q. But it was granted on the 19th? A. All the paper work was filled out and we committed on the 19th to the loan.

Q. You had a meeting of the minutes on the 19th? A. That's right.

Q. But no moneys flowed out until the 20th? A. That's correct.

Q. And that was the same day you received the American Leisure stock? A. Yes, I believe that is the same day that we received the American Leisure stock.

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[598] A. My understanding of the functions were that Rubin was the financial man. He answered questions on financial matters and spoke to the bank about financial information. Deaton was the operating man. Whenever you would get into specifices on coal or natural gas, that is when he would speak.

That is what my impressions were.

Q. How did you reach those impressions? A. From conversations with both gentlemen.

Q. Do I take it your conversations with Mr. Deaton were directed in the same or different areas from your conversations with Mr. Rubin? A. Most of the time different. If they were there together then Rubin would answer the financial questions and Deaton would answer the operating questions as far as coal and gas.

Q. You testified in cross-examination that Mr. Rubin appeared to have some relationship to financial affairs of the company, is that correct? A. That is correct.

Q. Upon what did you base that conclusion? A. From conversations with him on financial matters. He was the one that I spoke to whenever there [599] was anything of finance that had to do with Tri-State Energy.

Q. Did he appear to be knowledgeable about it? A. Yes.

Q. Do you recall being asked on cross-examination about prior dealings of the bank with Englander & Bernstein, the accountants? A. Yes.

John Joseph Keating—for Government—Redirect

Q. Do you know whether the bank had any prior dealings with Mr. Rubin? A. Yes.

Q. And did that affect the making of the loan in any way? A. Yes, it did.

Q. How was that? A. Well, he was known to Ray Ludwig, who was the office manager, the chief lending officer of the office, and he was, to my understanding, respected as a knowledgeable accountant.

Q. Did the bank's knowledge of Mr. Rubin affect, in any way, the kind of background checking done on the borrower? A. Yes. We normally, if an account was being [600] brought in by someone that was well-respected, well-known to the bank, you would not normally do the amount of background checking that you would if somebody walked in off the street or was introduced to you from someone that you didn't know at all.

Q. Now, did the fact that Mr. Rubin was known make it harder or easier for Tri-State to get a loan? A. Easier.

Q. Have you personally ever dealt with Deaton or James previous to Tri-State Energy? A. No, I had not.

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[605] Q. I believe on cross examination you were asked if as of February 26, 1973 any of the notes were in default, do you recall that? A. Yes.

Q. And you answered that they certainly had matured? A. True.

Q. Is there a difference between the two? A. Default has the connotation that the loan is more of a loan agreement where you might set down certain specifics that a company would have to live up to and if it didn't live up to it then you would have the right to accelerate the loan before its maturity. These loans had matured but we still

—they were due and payable, but we didn't consider them at that time to be in default. We still thought we would get paid.

Q. Is there a reason you didn't consider a default? A. Because we felt we would be paid.

Q. What was the basis for that thought on your part? A. Discussions with the officers of Tri-State Energy.

Q. Was there anything that compelled or obliged the bank to make the new loan or the new note evidenced by [606] the February 26th demand note? A. Nothing.

Q. That was discretionary? A. Yes, it was.

Q. Could you at that point have simply let all the notes mature? A. Yes, we could.

Q. And at maturity, could you have demanded payment? A. Yes, or before, if we so chose.

Q. If there was an event permitting it? A. Yes.

Q. Why again did you choose not to follow that course? A. The normal policy of the bank when there was a work-out loan or a problem loan was to put it on a demand basis in one note.

Q. If there was no hope of repayment at the time, as maturity approached, what would you have done? A. I don't know. I most likely, I can only say that I probably would have let the loans mature and sent it to the Legal Department for collection.

Q. And sold the collateral? A. Yes.

Q. The October 20, 1972 financials, you made loans [607] to Tri-State after you got those financials? A. Yes.

Q. And were you aware of the contents of those financials when you made those later loans? A. Yes.

Q. And the first collateral you received was October 20th, correct? A. That is correct.

Q. And you received other collateral later, is that correct? A. That is correct.

John Joseph Keating—for Government—Redirect

Q. And did you make or continue to make loans after you received subsequent collateral? A. Yes, we did.

* * *

[608] Q. That projection, Document A9, had you received it before or after the December 6, 1972 loan for $275 thousand while it was made? A. I believe before.

Q. Did you take it into account with respect to that December 6th loan? A. Yes.

Q. What about the November 30th $100 thousand loan? A. I believe that I had the projection at that time and that it would have been taken into account also.

Q. And that projection, if you turn to it, A9, the top line, does it refer to the length of the projection? A. Yes, it indicates that it is a three-month projection.

[618] Q. Mr. Keating, the length of maturity of these notes to which you have testified, the three-month notes you had, and when I say you, I mean the bank, had the authority, did you not, in the event that checks were bouncing to call a note? A. Yes.

Q. So that actually the maturity of the notes which had been issued up to December 6, 1972 totaling $475 thousand, could have been called by virtue of the events [619] which occurred at the bank to which you made reference of alarming overdrafts by Tri-State Energy? A. Yes, they could have been called prior to maturity.

Q. But they weren't? A. They were not.

* * *

Thomas Cox—for Government—Direct

[649] THOMAS COX, called as a witness by the Government, being first duly sworn, testified as follows:

Direct Examination

* * *

[680] Q. You mentioned earlier some stock. Did Mr. Rubin tell you how Tri-State got the Allstate stock? A. Allstate Life Insurance stock I think was obtained from a Herbert Berg. I'm not sure just who, whether Deaton knew Herbert Berg. But—

> Mr. Bender: Again, excuse me, your Honor, is this his own recollection or is he talking about what Mr. Rubin said?
>
> [681] The Witness: This is my recollection of what Mr. Rubin told me or told us.

A. Rubin, when he was with North American Planning Company had Bank Computer Stock and I believe the Bank Computer had a value to it and all the other stock that Mr. Rubin described was shell corporations, meaning that they were legally incorporated, these corporations were legally set up, but they did not have any, any assets. They had no value. They did not have a business. They did not have any office and all they were were names with the legal authorization to issue stock.

Q. Again, this is as Mr. Rubin told it to you? A. Now, that is my understanding, and this is it, maybe not his words, but these, these are what these corporations consisted of. These were shell—his words were "shell corporations".

Q. Okay. Only tell us what Mr. Rubin told you. A. It's pretty hard to remember the exact words.

The Court: Your best recollection. She is not asking you for the exact words. Give us your best recollection of what he said.

A. My best recollection was that these were shell corporations without assets. He didn't say without—he said, "*shell corporations.*"

[682] And that they rented these stocks and buy—

Q. Who are "they"? A. Tri-State Energy, Deaton, James. Whether that includes Rubin or not, I don't know. Mainly Deaton and James. They rented it. They paid money for the use of the stock and the purpose for renting the stock was to use it as collateral for bank loans, and in addition to Deaton and James there was another individual, an Owen Oons, who is going throughout the country, Albuquerque, Florida, and he was pledging this stock or he was using this stock as collateral to get back loans.

Q. Which stock? A. Allstate Life Insurance. I'm not sure about Bank Computer. I would have to look up the names. There were several stocks. Allstate Life Insurance was one. I'm not sure if they used Charter Financial. They had two and a half million shares of Charter Financial.

Q. As to Allstate, did he tell you how that particular stock was obtained? A. Which one?

Q. Allstate. A. Allstate Life Insurance was rented from a Herbert Berg.

Q. Whose word was "rented"? [683] A. Rubin's word.

Q. Continue. A. As I say, I don't recall who contacted Herbert Berg or how Herbert Berg was contacted.

Q. Did he tell you anything about the transaction that you do recall? A. To explain it I have recollections of Allstate Life Insurance and the other stocks that came in

and I have recollection from other individuals that told me about it.

Q. Don't tell us about that. A. Yes, but I'm trying to separate what Rubin told me from what I know about it, and I would say other than him mentioning Allstate Life Insurance Company and him knowing that it is—it was without value and that it was going to be used as collateral, I don't think I recall just exactly what it was.

Q. Did he tell you when he knew that it was rental? A. He knew that these were valueless all along, that they were rented stocks, yes.

Q. What do you mean by "all along"? A. Whenever the Tri-State acquired it he knew. In May I think he first became associated with these individuals from Tri-State in the early part of 1972 in [684] May, and they incorporated Tri-State Energy something like June 12 of 1972, and all these series of what they did is on paper they would transfer millions of tons of coal in-ground and they would purchase this stock on-paper secured by reserves in the ground, and they would pay the individual that had it, they would pay him in cash a certain amount of money.

Q. Again he called this what? A. These were rented stocks.

Q. Did he tell you anything about Satellite Systems and Marlin Corporation stock? A. They were obtained from a Medwin Benjamin. Medwin Benjamin, a Peter Crosby and a William Hamilton. Somebody contacted James, either William Hamilton or Peter Crosby, and said that he could, the Medwin Benjamin—Peter Crosby did. Peter Crosby called James. And Peter Crosby told him that he had stock that he could rent, that he could use as collateral in the bank. And those stocks were Satellite

Systems and the other one you just mentioned. Peter Crosby at the time was a fugitive. And he—

> Mr. Bender: I am going to object to that, your Honor. Is this another thing—
>
> The Court: Is this something that Mr. Rubin [685] told you?
>
> The Witness: Mr. Rubin told me that.
>
> Mr. Bender: I object to it anyway, is that something that Mr. Rubin is saying that he learned in 1974, '75, '76, or whenever this man is testifying that he interviewed Mr. Rubin? Is this an impression we are trying to create that this man knew that it was with Tri-State in 1972? I object to it. I think it is improper.
>
> Ms. Neugarten: May we ask when the witness knew—
>
> The Court: When did Rubin say that he knew that Mr. Crosby was a fugitive with relation to the activity at the bank?
>
> The Witness: At the particular interview we had with Mr. Rubin, Rubin knew at that interview that Crosby had been a fugitive, and he knew at the time that William Hamilton brought up the stock or brought the stock to Tri-State Energy that Peter Crosby was a fugitive.

Q. He knew it at the time that Mr. Hamilton brought the stock, is that what you are saying? A. The reason I have to think so much is because a lot of people have told us what happened, and Mr. Rubin told us what happened, but at the time that William Hamilton brought the stock Rubin knew that he [686] was a fugitive.

Q. That is what Mr. Rubin told you? A. That is what Mr. Rubin told me.

Q. Again we only want to hear what Mr. Rubin told you, okay? A. I'm trying to separate what Mr. Rubin told me from what other people have told me.

Q. Did Mr. Rubin tell you what the terms were for Marlin and Satellite? A. I don't think he did.

The Court: When you say the terms were, what do you mean?

Ms. Neugarten: I don't want to lead the witness your Honor.

A. What I understand you mean by the terms is what they had to give to get the stock, how much money they had to give or what they had to give in return for it. Is that it? I don't think he know or he didn't mention what they gave.

Q. Going back to Allstate, did the witness tell you anything about a Jerry Marshall? A. Yes, he did.

Q. Can you tell us what that—I said did the witness tell you, I'm sorry. Did Mr. Rubin tell you anything [687] concerning Jerry Marshall? A. Jerry Marshall was a stock broker that Rubin knew personally. And they had pledged this stock at, or they were going to pledge this stock at Bankers Trust Company and they wanted to give a value to it, Deaton wanted to give a value to it. So Deaton wanted a price in the pink sheets. The pink sheets are the national—the over-the-counter market. I think the National Quotation Service. They print the sheet. They print the price each day of the transactions. And these prices come out on sheets that are colored pink and they call them pink sheets.

So Rubin introduced Deaton to Jerry Marshall. Deaton told Rubin to buy a hundred shares of stock and he gave a check made out to cash for $2200 for the stock.

Rubin endorsed this check and he gave it to Jerry Marshall, and the reason that Deaton didn't want—let me see —no. He asked Rubin to make out his own check because he didn't want Tri-State Energy connected to the sale. He wanted this a transaction that was done by somebody that was not related to Tri-State or that they couldn't identify —that anyone could not identify as to who bought the stock, so Rubin made out his own check for $2200.

[688] And he gave it to Jerry Marshall with the instructions to buy 100 shares of stock. I believe the price was $20, and that this price appeared in the pink sheets. Rubin never received any stock for this transaction. Rubin knew the trader, the Jerry Marshall brokerage company was a man named Al Reeves, and Al Reeves said he never placed an order for the stock because this stock was not available, there was no place to buy it for one thing.

Q. This is what Mr. Rubin told you? A. That's right.

* * *

[717] Q. Do you recall what stock it was with with which Mr. Lipsitz was mentioned by Mr. Rubin? A. American Leisure.

Q. Do you recall what it was that Mr. Rubin said about American Leisure?

* * *

A. Yes, I do.

Q. Could you tell us what it is? A. Rubin said a lot of things about American Leisure and one of the things he said was that 400,000 shares of American Leisure stock were brought in to Tri-State Energy through Jack Lip-

sitz and Ira Blue. Lipsitz was apparently the owner of it, and Ira Blue was the attorney. This stock was used as collateral at the Bankers Trust Company to secure bank loans for Tri-State Energy.

[718] Q. Did Mr. Rubin tell you what the price of that stock had been, if you recall? A. I don't recall the price of the stock.

Q. Did Mr. Rubin tell you how the stock was acquired, if you recall? A. I just recall the general way in which all the stock was brought in which was that these were all shell corporations and they were brought in and they didn't have any real—

> Mr. Bender: I move to strike the answer as unresponsive, your Honor.
>
> The Court: In other words, you don't remember anything specific Mr. Rubin said, is that it?
>
> The Witness: I remember 400,000 shares of American Leisure were brought in to Tri-State Energy. I remember that American Leisure was placed—
>
> The Court: Is this something Mr. Rubin told you?
>
> The Witness: Yes. This stock was pledged in the bank on collateral for the loans that Tri-State Energy was requiring.

* * *

[723] Q. Did Mr. Rubin tell you anything regarding an advertisement at Satellite Systems? A. Medwin Benjamin, I believe that's his name, placed advertisements in the International Herald Tribune and in that advertisement he would list a series of stock and one of the stocks that was listed, was Satellite Systems, and I believe he

established the price at the last sale as $20 for that stock and they took that advertisement—when I say "they," either Deaton, James or Rubin, they took that up to Bankers Trust Company and they established the value of Satellite Systems that was pledged with Bankers Trust Company, as collateral, a value of $20 a share for that stock.

[724] Q. And did Mr. Rubin tell you anything regarding his opinion of that value? A. Well, all along we discussed this or he discussed it that these were all shell corporations with stocks that had no inherent value—

> Mr. Bender: I move to strike the answer as unresponsive.
>
> The Court: Can you remember what he told you or are you telling us the substance of what he told you or what?
>
> The Witness: Well, in these conversations that we had, there were 12 conversations or more, he explained the way Tri-State Energy operated, the way they took the stock and they went up and secured the bank loan with the value of the stock, and then he explained where the stocks came from, what the stocks were and how values were placed upon the stocks, how they established the value so the bank could place a value on it, and show that the collateral was equal to the bank loan or greater than the bank loan.

Q. Did he tell you anything regarding his opinion of th se values? A. This thing on the International Herald-Tribune or the value of the stocks in general or what? He [725] established the value of the stock through his own efforts. There was a stock, I believe Allstate Life

Insurance Company, and Deaton wanted to get a price for the stock.

> Mr. Bender: I object to this. I think we are on Satellite Systems. I don't know how we got into Allstate. I don't think there is any question about Allstate at this moment, is there?

Q. Do you recall anything on Satellite Systems? A. Only that it had a price of $20 in the International Herald-Tribune advertisement, no; and that it was pledged as collateral for a bank loan for Tri-State Energy.

Q. Do you recall if Mr. Rubin told you how much Tri-State had paid for Satellite Systems? A. Yes. Satellite Systems and Marlin Investments were obtained from Medwin Benjamin, and they were the stocks that were obtained through Peter Crosby who used William Hamilton as an intermediary to deliver the stock.

> The Court: Which stock is this again?
>
> The Witness: Satellite Systems and Marlin Investments. Crosby had a conversation with James to say that he—that Medwin Benjamin had the stocks and Benjamin was willing to let these stocks be used as collateral for loans. Benjamin wanted, I believe, 7 [726] per cent—he wanted a 7 per cent rental for the stock and if it was not returned he wanted one-half the bid price of the stock on a certain day. So Hamilton delivered the stock to Tri-State Energy or he wanted the stock returned.
>
> Benjamin wanted the stock returned if he didn't get those figures. I forget, 7 per cent of the value

—anyway, Benjamin never received any money for the stock and he got very upset and he kept calling up and he wanted money for his stock.

Eventually Benjamin sent an individual up to Tri-State Energy to enforce the demand for money for the stock and Deaton in turn called upon somebody else to tell this man that came up—I forget how it was worded but anyway, to tell him not to try to get money for the stock.

Q. Did Mr. Rubin tell you who prevailed? A. Deaton's man prevailed.

Q. Did Mr. Rubin mention anything to you about projections? A. Yes, Rubin made the projections for the company. He would project how much the company would sell in a given period of time, how much revenue they could anticipate and so forth.

[727] Q. Did Mr. Rubin tell you anything about an Owen Oons? A. Yes, he did.

Q. Do you recall what that was? A. Owens Oons was an attorney who was going through the United States trying to get loans for Tri-State Energy and pledging the stock that we have been talking about as collateral for the loans.

Q. Did he indicate whether Mr Oons succeeded in getting loans? A. Owen Oons succeeded, according to Rubin, in getting somewhere between, I believe, $350,000 and $500,000 in loans for Tri-State Energy.

Q. Did Mr. Rubin tell you from banks in what part of the country those loans were obtained? A. One was the Bank of Alburquerque, and he mentioned banks in Florida and I believe another state.

Q. Did Mr. Rubin tell you anything regarding stock of a company called Management Dynamics, that you recall? A. He mentioned Management Dynamics, yes.

Q. Do you recall what he said? A. That was another stock that they brought in to Tri-State Energy and I forget the terms, and I forget how he brought it in.

> [728] Mr. Bender: How he brought the conversation in or how he brought the stock in?
>
> The Witness: The term is Rubin's, he brought it into Tri-State Energy, it's not mine.

Q. Is there anything that would refresh your recollection about Management Dynamics? A. That also would be in the notes here.

Q. Would you please take a moment to look at them. That is Government Exhibit 66 for identification, which are the notes you are referring to, Mr. Cox? A. The notes I am referring to are 66 for identification, yes.

[729] I see a reference here to Management Dynamics, and I think it refreshes my memory of what happened with Management Dynamics.

* * *

All right, your recollection is refreshed. You can look for the date later. A. Right, yes, I do.

Q. And do you recall what it was? A. Rubin said that James brought negotiated Management Dynamics and that is what the note said. I recall, and it should be here in the rest of it, that Tri-State Energy bought a certain amount of shares of Management Dynamics for $140,000. They took Management Dynamics and they pledged it at Bankers Trust Company.

Thomas Cox—for Government—Direct

Then the company itself, Management Dynamics, could not account for 900,000 shares so the SEC, the Securities and Exchange Commission, said to stop trading in the stock.

Then since the stock became restricted, it [730] was not good collateral at the bank. So Tri-State, either Rubin or James, went to the president of Management Dynamics and,—I jumped a little ahead of myself. This was gotten through two people, Freddie Remick, and some guy named Gottlieb, and they had a brokerage commission of $40,000, and the value of the stock was $100,000. So the president of Management Dynamics agreed to give them back $100,000, but they couldn't get the other $40,000 because he had never received it and this was a brokerage commission.

So then Rubin went back to Bankers Trust Company and went back and saw Keating and told Keating he wanted Management Dymanics returned to him and he would substitute another stock for it.

Q. Did Mr. Rubin tell you the reason he gave Mr. Keating for wanting it returned? A. The reason he—that he told Keating?

Q. Yes. A. He wanted the stock back?

Q. Yes. A. No, he didn't explain that the trading in the stock was stopped and I forget the reason he gave Keating, but the reason he gave us for doing this was in order to keep the Bankers Trust Company loan in good [731] standing, that it was not secured by collateral that was not acceptable to the bank.

Q. I'm not sure I understand your last answer.

Is it your testimony that he told Mr. Keating that the stock was not traded or he told Mr. Keating anything else? A. He told Mr. Keating something else. He did not give Keating the real reason why he wanted the stock back.

Mr. Bender: I object to that and move to strike it out unless we can get really what the conversation was. It's a conclusion on his part.

The Court: Is this something Mr. Rubin told you?

The Witness: This is something that Rubin told me.

Mr. Bender: You mean those were the words that he told him that he didn't give Mr. Keating the real reason or—

The Court: Is that it?

The Witness: The word "real" may not be appropriate there. He did not give Keating the reason that Rubin had for taking the stock back.

* * *

[819] Q. If you go back to page 7, isn't it a fact that just preceding that there are notes which indicate that he was asked about Satellite, he was asked about Marlin, he was asked about Hamilton, Peter Crosby; isn't that correct?

Isn't that correct, sir? A. No, I—I don't read it that way.

Q. What's your recollection? A. My recollection is that they pledged Marlin Investment at Bankers Trust Company and then after they pledged it, the company Marlin found there were 900,000 shares of stock unaccounted for and they asked the SEC to prohibit trading in the stock which meant that the stock then [820] pledged at Bankers Trust was no longer good collateral for the loan. So then Rubin went up to Bankers Trust Company, got the stock back from Keating and substituted another stock for that.

Q. Mr. Cox, isn't it a fact that Mr. Rubin told you guys that in his opinion at the time you interviewed him these certificates of stock were "shit"? A. That's right.

> Mr. Bender: Forgive me, your Honor, but that's a quote. I mean, it is right in the notes, so I apologize to anybody who is offended by it.

Q. Isn't that the way it appears in the notes? A. Does that mean it's restricted?

Q. No, but the word I used, which I am blushing at, isn't that what the note says? A. Yes.

• • •

[926] MAX ENGLANDER, called as a witness on behalf of the government, having first been duly sworn, testified as follows:

(Direct Examination)

• • •

[939] A. The next document is Exhibit 122 which is the pink sheet referring to the bank computer network stock value which was circled and this was referred to in my report, in the text of my report under "Investments, Part 2B."

Q. Which exhibit are you referring to? A. Exhibits 96 and 97.

Q. What date is the pink sheet? A. It looks like July 12, 1972.

Q. And Exhibit 123? A. 123 refers to All States Life Insurance Company which is the pink sheet which gives me what you can buy the stock for and what you can sell the stock for.

Q. Can you tell its date? A. It looks like July 12, 1972.

Q. Would you describe for us how you went about the preparation of the July 11th balance sheet and the report dated as of July 18, 1972, which accompanied it? A. Well, the text is July 18th and the reason the text was not written until July 18th is because I was waiting for the letter from the Chelsea National Bank. That letter was dated July 18th and that confirmed the amount of cash that was reflected on the balance sheet. The other items I had received on July 11th since my report was as of that date, I used the pink sheets for the purpose of [940] commenting what those stocks were worth as of that day but on the balance sheet they were reflected at cost only.

All the other items that we were going under the exhibits were in preparation of that July 11th report.

Q. Each of those items was supplied with the exception of the letter from Chelsea Bank, it was supplied by Mr. Deaton? A. Yes.

Q. And the Chelsea Bank letter? A. Was signed by a Larry L. Bornstein, Senior Vice President.

Q. And was sent directly to you? A. Yes, ma'am.

• • •

[1119] CHARLES LEEDS, called as a witness by the Government, being first duly sworn, testified as follows:

(Direct Examination)

• • •

[1120] Q. As associate general counsel of Bankers Trust in 1973, did there come a time that you attended a meeting

in May 1973, at which time Mr. C. W. Deaton was present? A. Yes.

Q. Do you recall who else was present at that meeting? A. Mr. Gene Brinker, who is a first vice-president of the bank, William Powderly, who worked with Mr. Brinker, Steven Fried, who worked in the bank's 39th Street and Broadway office, myself, Mr. Deaton, and that is it.

Q. Were you present from the outset of the meeting? A. I may have arrived seconds after the commencement of the meeting.

[1121] Q. Do you recall who did most of the talking at that meeting? A. Mr. Deaton. * * *

* * *

[1127] Q. What was the occasion for this meeting? A. Mr. Deaton was explaining that there was no possibility of recovering any money from Tir-State Energy Corporation, which was indebted to the bank for a specific sum of money at that time, by reason of the fact that Tri-State did not have any assets or any collectible assets, but that a corporation in which Tri-State had an interest, General Oil & Gas, did have some possible assets and if these assets were exploited, there would be a possibility of [1128] recovering a certain amount of money to satisfy or partially satisfy the Tri-State indebtedness to the bank.

But for this purpose Mr. Deaton had indicated that he would require an additional sum of money and we all assumed that that was the purpose of the meeting, to get additional loans from the bank for assumedly these purposes.

* * *

Q. The money, the additional monies that were being requested for Mr. Deaton personally or for some other

business? A. It wasn't made entirely clear but I was under the impression that he wanted to borrow these monies through the corporate vehicle, Tri-State.

Q. As had been done before? A. Yes. He was already a guarantor for Tri-State so he was also looked upon as personal vehicle of collection by the bank.

Q. Do you recall if there was any discussion of leases at that meeting? A. I can't say specifically. It is just that at one particular time I interrupted Mr. Deaton and I asked him whether the leases with regard to the assets he was talking [1129] about, and I wasn't certain at that moment just what assets he had in mind, were still available or whether or not they had expired.

He had indicated that they did expire, but he didn't think there would be any problem in getting them reinstated or reviving the leases.

Q. And what again was the date of this meeting? A. The date was May 14, 1973.

Q. As a result of the meeting, did the bank extend further loans to Tri-State Energy? A. No.

Q. Did you, as of that time, commence a lawsuit against Tri-State Energy? A. Shortly thereafter.

Q. Approximately how much money in total did the bank recover as to the total loans it had extended to Tri-State Energy?

> Mr. Bender: I object to that as far as it being beyond the period that we mentioned and not binding upon Mr. Rubin.
>
> The Court: Overruled.

A. $2,500.

Q. $2,500? A. Yes.

[1130] Q. And the loans were 475 thousand? A. Yes.

* * *

John E. Pinto, Jr.—for Government—Direct

[1203] JOHN E. PINTO, JR., called as a witness by the Government, being first duly sworn, testified as follows:

* * *

Direct Examination

* * *

[1211] Q. Directing your attention to July, that is advancing a month from June 1st, did you ever have any conversations regarding the financial problems and possible solutions at North American Planning? A. Yes, I did.

Q. With whom did you have such conversations? A. With both Mr. Goldenberg and Mr. Rubin.

Q. Can you recall if any proposals were advanced by North American to solve its problems in July? A. Yes, in July we received a financial statement from North American Planning for the month end June 30, 1972, and on that financial statement we noted that there was an increase in the firm's capital of approximately $190,000 and upon review of the financial statement we found that the reason for that increase was that the firm had subordinated 10,000 shares of All States Insurance Company of Alabama. We, at that point, had some questions about the All States Insurance Company of Alabama from a liquidity point of view and thereafter had conversations both with Mr. Rubin, Mr. Goldenberg regarding that.

Q. Would you relate to us the substance of those conversations regarding All States? A. May I refer to my notes on this? [1212] A. Yes, if you refer to any notes would you indicate their number. I believe you will find a four digit number in the corner of each. A. Okay. This is 3615AAA.

Q. If you, rather than reading from the notes, can refer to them to refresh your recollection and then testify. A. Okay. On July 14 I spoke to Mr. Goldenberg regarding the firm's net capital for the period ending June 30. If the 10,000 shares of All States Insurance were given full value the firm would have been in compliance with the net capital rule. One of the things that you have to consider when reviewing for net capital is the liquidity of the assets.

The net capital basically is a liquidity rule, how rapidly and how quickly can these assets be converted to cash.

In reviewing the 10,000 shares of All States I reviewed the pink sheets to determine whether there were any marketmakers in the security and upon reviewing I found that there were two marketmakers in the pink sheets and as was our standard procedure at that time for large blocks of stock in a limited number of marketmakers we surveyed the two marketmakers to determine how liquid this position was.

[1213] In other words, they as marketmakers and as a marketmaker, I mean this is a broker dealer who stands ready to buy and sell a security and he publishes his quotations in what is called the pink sheets, at least at this time we are talking about the pink sheets.

Basically the pink sheets are really an interdealer quotation system. It is a place broker dealers go to publish what their quotes are to say I am willing to buy and sell at these prices.

So we looked at the pink sheets and found that the two broker dealers that were in the sheets were only in on the bid side and the bid side means they were only looking to buy shares.

They were not on both sides of the market.

John E. Pinto, Jr.—for Government—Direct

We found that through conducting the survey of the two marketmakers that there was very, very little trading activity in the security and, as a matter of fact, we made a determination that of the 10,000 shares of All States only 200 shares could be considered as an allowable asset for net capital purposes.

That was brought about by the fact that between the two marketmakers who had been in the sheets for six weeks or so they had only done 100 shares between them.

[1214] Q. Continue with your discussions.

* * *

A. I advised Mr. Goldenberg that based on our determinations as to the liquidity of the 10,000 shares of All States that we would not be able to give them a liquid asset value for it and based on that determination the firm was not in compliance with the SEC's net capital rule for the end of June.

The ramifications of that could have been that we would have requested that the firm cease doing business [1215] in securities.

Mr. Goldenberg rseponded by stating that he had two alternatives at this point, one of which was to sell the 10,000 shares of All State back to the issuer and convert that cash into assets for the firm or as an alternative take the 10,000 shares of All States, pledge them as collateral for loan at a bank and then put that money which is received by collateralizing the loan into the firm as capital, thereby increasing the firm's net capital.

These were the two positions. He also raised the question or the possibility of North American Planning's involvement with 2.5 million tons of coal. He expected some half million dollars in some sort of commissions as a result of a sale of that coal and he said that that half mil-

lion would also be coming into the firm and would increase the firm's net capital.

* * *

[1219] Q. Did you discuss the All States at any other time? A. On July 19th I spoke to Mr. Goldenberg. I was calling to find out the relationship between Tri-State and All States. I was advised at that point that Tri-State had invested $1 million in All States Insurance and in return for that Mr. Goldenberg believed the firm had received stock and part ownership in all States Insurance.

So that according to Mr. Goldenberg, there was a definite relationship between Tri-State and All States Insurance. The reason why I was asking the question is based on my discussion with one of the market makers, I determined that there were only 120 thousand shares of All States Insurance outstanding in total. Of that 120 thousand, there were only about 1,300 that were publicly traded in the hands of the investors.

My question came as to the marketability, not from the point of view of liquidity at this point, but were these restricted shares, was there any legend on these shares that would prohibit the seller or the owners of the shares from going into the marketplace and selling them.

So my purpose in asking the question, one of the factors in determining whether it is restricted stock, would be the relationship between the owner of the shares and the [1220] issuer itself.

In this case, based on my discussions, there appeared to have been a relationship between Tri-State and All States Insurance.

I think that basically covers the All States.

Q. Did you discuss that possible restriction with anybody else? A. I discussed the restriction in the trading

of the shares with Mr. Goldenberg. I am just looking for the date. I discussed them with Mr. Goldenberg and subsequently had a conversation with Mr. Rubin. On July 19th I had this conversation with Mr. Goldenberg. Right after that I talked to Mr. Rubin and although my memorandum does not specifically say that I reiterated everything that I had just discussed with Mr. Goldenberg, my recollection of the fact is that I would have reviewed what I had just discussed with Mr. Goldenberg because of the relevance and importance of whether or not these shares were restricted shares.

Q. I believe you said that your question was occasioned by the fact that there might be only 12 or 13 hundred shares in the hands of the public, is that correct? A. Yes, ma'am.

Q. Did you understand that that in some way might effect marketability? Was that your understanding at the [1221] time? A. Yes, that would definitely have meant that there was a very, very thinly traded market for the shares. In other words, if there is only 12 or 13 hundred shares in the public's hands that is freely tradeable, that is the fullest extent of what can be traded without any kind of restrictions on the sale of the securities. So that would have severely impacted the ability to sell those shares.

Q. Handing you what has been marked as Government's Exhibit 87 for identification, a photocopy of a document. A. This is a copy of the subordination loan agreement which was filed by North American Planning with the SEC with a copy to the NASD dated June 30, 1972 wherein Tri-State Energy was subordinating the 10,000 shares of the common stock of All States Insurance Company to which they attributed a value of $190 thousand.

Q. By whom does that appear to be signed? A. The lender is C. Deaton—I can't read the middle initial, and the borrower for North American Planning is signed by Eugene Goldenberg.

Ms. Neugarten: At this time the government offers Government's Exhibit 87 for identification into evidence as Government's Exhibit 87.

Mr. Bender: Is this also on background, your [1222] Honor, or is this for the truth of the contents of this agreement? If it is, I object. If it is just for background, then I don't see any reason for it. I don't know what it is put in for.

Ms. Neugarten: The government has urged throughout the trial and the indictment urges that All States stock was later pledged as collateral at Bankers Trust by Tri-State, including at that point Mr. Rubin, and that the government's contention is that Mr. Rubin should have known from his conversations with Mr. Pinto something about All States.

This is the documentation which led to the conversation with Mr. Pinto. And it places a value, according to Mr. Deaton and Mr. Goldenberg, on the stock, of what they were telling to the NASD. That goes in as background of a conspiracy that starts at Tri-State weeks later, only a few weeks later.

* * *

[1230] Q. Now, is there a difference in marketability between restricted stock and unrestricted stock? A. Yes, most definitely. As I mentioned previously, restricted stock, there are many procedural steps, there are a whole

time period for which you must hold the stock or relationship questions, all of which must be resolved before somone can sell restricted shares.

The SEC has adopted a rule, it is Rule 144, which specifically addresses the sale of restricted securities. Freely tradeable securities are very simple. You go to the marketplace in which the stock trades and you sell it without any course of delays or encumbrances.

Restricted shares, that is not the case. It is a rather involved process to sell restricted shares, and in some cases they cannot be sold.

Q. Now, you mentioned pink sheets. A. Yes.

Q. Could you tell us what the pink sheets are as best you understand? A. Pink sheets are an interdealer quotation system, wherein broker-dealers, who are making markets, as I mentioned before, broker-dealers who are advertising their bid and asked prices, the prices at which they are representing they are willing to buy and sell, they put these quotations in [1231] this interdealer quotation system for purposes of generating buy and sell orders.

Q. And which is the bid and which is the asked? A. The bid is the price at which they are willing to buy, and the asked is the price at which they are willing to sell.

Q. And to whom are pink sheets available? A. They are available to all broker-dealers, I know. And I think you can subscribe to get pink sheets even if you are a member of the public, if I am not mistaken. I'm not certain about that.

* * *

John E. Pinto, Jr.—for Government—Redirect

[1255] *Redirect Examination*

* * *

Q. Do you recall being asked in cross-examination, Mr. Pinto, whether you had firmly concluded one way or another whether the All States stock was restricted? A. Yes, Ma'am.

Q. Now, what was it that led you to believe that it might be restricted? A. During my conversations with one of the marketmakers I determined that there were a total of 120,000 shares in total that were outstanding in this particular security of which only 1300 were in the public's hands. The fact that we were talking about 10,000 shares of All States when there were only 1300 out in the public hands, I did not come to the very difficult mathematical conclusion that there were not enough shares in the public hand to fill the 10,000 shares that were being subordinated to the firm.

I, therefore, immediately raised the inquiry [1256] that if only 1300 are in the public's hands, the other at least 8700 shares are not in the public hands and, therefore, raises a question as to whether they were freely tradable.

In addition to that, I subsequently determined that there was a relationship between All States Life and Tri-State. That would raise even a further question as to whether the shares were restricted because even if an individual purchases on the New York Stock Exchange a freely tradable security, but his relationship with the issuer is of a control nature, those shares may, in fact, become restricted by that relationship.

So both of those conclusions, the number of outstanding, the number of freely tradable versus the 10,000

that were being subordinated and also the question at least that was raised as to the relationship between the issuer, All States, and the lender, Tri-State.

* * *

[1266] ALFRED REEVES, called as a witness on behalf of the government, having first been duly sworn, testified as follows:

Direct Examination

* * *

[1269] Q. Now, did there come a time in October of 1972 when you had a conversation with Jerry Marshall about All States stock? A. Yes, there was.

Q. And do you recall the substance of that conversation? A. As he had done in the past when he selected a stock for the house to trade, he would tell me that he had a particular stock. In this particular case he said had a new case for the house to trade All States Life Insurance Company of Alabama.

He gave me a stack of papers which I will use to file a 211 application with the National Quotations Bureau in order to get the stock listed in the pink sheets.

Q. Now, did there come a time that the stock was in fact listed at your behest in the pink sheets? A. Yes, it was.

Q. And do you recall approximately when that was? A. Approximately late October, 1973. I'm sorry, 1972, I think '72.

Q. Now, do you recall whether—that was after your conversation with Mr. Marshall? A. I recall it to be no more than two weeks. Normal procedure, when you file an application with the [1270] National Quotations

Bureau, they do whatever analysis they would normally do to determine whether the stock qualified for the pink sheets, and if they did, then they immediately notify you that it does qualify, and you are then free to list that stock with your broker-dealer name in the pink sheets.

Q. Now, did Mr. Marshall tell you why he wanted the stock listed in the pink sheets? A. He said he had an order on the stock.

Q. Did he indicate the amount? A. 100 shares.

Q. And did you have any further conversation with him regarding that order? A. I assumed at the time that since he had an order to buy the stock that the correct way of putting the stock in the sheets would be to bid for the stock, but he told me he wanted to make a two-sided market in the stock, offering the bid—having a bid and an offer in the stock.

Q. Now, do you recall—strike that.

Do you recall how the stock appeared the first day it was listed in the pink sheets? A. The market was to be 20 bid, 22 offered.

Q. And do you recall whether you had any conversation at any point with Mr. Marshall regarding the way the [1271] stock was listed in the pink sheets? A. We talked about—actually I talked about—he told me what to do—I took issue with him—when you put a market in the stock, it generally indicates that you are willing to buy and sell at the prices which you are listing in the pink sheets, and I warned him of the fact that by giving an offer of 22, that should somebody call up, another broker would be the type of person that would call, and ask for a market, and I gave him 20/22, and once I gave that market, I am obligated to sell him 100 shares if he wishes to buy it, and should we

have to sell somebody 100 shares at 22, I warned him that if the stock was not readily available in the market, and since we were the only market makers to be in that stock, I didn't see, couldn't see, where we would be able to find 100 shares, and I warned him that he could suffer a loss because of it, and that the firm, since it was marginally capitalized, it could jeopardize the net capital of the firm and perhaps cause its suspension.

Q. And did he do anything in response to your advice? A. He just said, "Leave the market at 20/22. Let's see what happens."

Q. Was there ever a point at which the stock was listed without a price by you in the pink sheets? [1272] A. Yes. From time to time—let me tell you the procedure that is used to create each day's quotation.

They provide computer cards to each firm that had the firm's code already punched into it. You would then write the name of the stock and the market that you wished to have show in the pink sheets on that. You then sent it to the National Quotations Bureau on any given day, and that would be the quotation you would show for the next day in the pink sheets.

Initially, at the beginning, maybe the second, third or fourth day, I don't remember which, I didn't put a quote. I put the card in but I did not put a quote on it because I was still apprehensive about putting a two-sided market. In fact, I think it was the second day that we prepared the sheets, I didn't put a market in because I didn't think he fully realized the jeopardy he was putting himself in as a firm.

The following day when the quote did not appear, he brought it to my attention immediately, and insisted that a two-sided quote be made at all times.

After that, from time to time, just through its called order, that because of the business of a particular day, I would forget to put all the cards in so that not only All States would be missing but other would be missing [1273] there were days when just the stocks that we were very active in got filled out and sent in and the ones that were inactive weren't sent in, but there was no rhyme or reason why the stock was listed or not listed on those particular days after the first miss.

Q. Well, did Mr. Marshall continue to instruct you to list the stock? A. Right. Every time that I missed, he would always bring it to my attention.

Q. And tell you to put it in again? A. Right.

Q. Now, you said that you went in on both sides of the market. What do you mean by that? A. In the pink sheets—let me just start from the beginning and explain what the pink sheets are for.

There are stocks that are not listed on the New York Stock Exchange or the American Stock Exchange or any other exchange. Many of these companies are in effect listed in the pink sheets, and merely what it does is to tell all the brokers who subscribe to the sheets that you have an interest in a particular stock.

If the stock qualifies, the name of the stock appears alphabetically in the sheets, and all the brokers who are interested, either on the buy side, the sell side, or [1274] both, are listed underneath the name of the stock.

I forgot the point I was going to make.

Q. Okay.

Now, how can you go into the pink sheets, in what different ways may a broker enter? A. Okay.

The pink sheets can either appear on a blank, which would merely indicate, after your name there would be nothing, and that would just indicate that you had some

interest in the stock, but you weren't ready to disclose what the interest was.

[1275] Q. This is what you did in that early day? A. Right, on the second day I believe it was. Just that you had an interest.

The way most stocks are listed are with the two-sided market, a bid and an offer. The bid represents the price at which you would be willing to buy the stock and the offer, the price at which you would be willing to sell the stock.

This is really only an indication because what you put in for Monday appears on Tuesday, and it tells everybody on Tuesday what you would have done on Monday. But anyhow, it's an indication that you are willing to buy and sell at these prices.

There is another way in which you can appear, and that is if you wish to disclose that you have a bid, but you don't want to disclose exactly what the bid is, you can put a BW into the sheets, which means bid wanted. I am sorry, it's the reverse. If you want to buy, you would be looking for an offer, so it would be offer wanted.

So if you wanted to buy the stock you would put an OW by your name and that would indicate to all those looking in the pink sheets that would entertain an offer, if they wanted to tell to you, you would be wiling to buy. The other side would be if you wanted [1276] to sell you would be looking for a bid from somebody else. You would want them to bid you for the stock, so you would put a BW in which you would be indicating that you wanted a bid for the stock.

And those are the ways in which it can appear in the sheets.

Q. Now, can you go in one side rather than both sides? A. Yes. You could go in with an actual number on the

bid side or you can go in with an actual number on the offer side.

Q. Now, when you go in on both sides, is there any consequence or rule with respect to being in on both sides? A. Any consequences? No, there is none.

Q. Now, is it an indication of any willingness to do anything? A. Yes, it is an indication that you are willing to buy and sell even though not perhaps at that particular price, but that you would be normally willing in the course of your regular business to buy and sell the stock.

Q. Now, Mr. Marshall said he had what kind of order? A. He said he had a bid; someone who wanted to buy 100 shares.

[1277] Q. Did he say he had anyone who wanted to sell any shares? A. No.

Q. So, for what reason were you in on the sell side? A. He wanted to be on both sides.

Q. Now, to the best of your knowledge, was the subject of payment for the stock ever discussed? A. Yes. I told him that the fact that he was putting in any type of market into the pink sheets that since we were the only market makers in the stock at the time, that if he did have in fact somebody who wanted to buy the stock, that the possibility existed that when the time came to call the guy up and say, "We've go the stock, we're selling it to you," and he says, "Oh, no, I changed my mind, I don't want it," he would then be stuck with 100 shares of the stock.

I suggested that if he in fact had an order in the stock that he get payment from the customer.

Q. Now,—and these pink sheets, to whom are they available, to the best of your knowledge? A. Any broker—I think it is any broker. I don't know if outsiders can get

it or not. But basically, brokers who subscribe to the pink sheets have them available.

Q. Now, did whoever—were you ever in fact able to execute this order? [1278] A. No, I never had an order in the stock. I never had an execution; no buys and sells.

Q. And did you ever hear of a company called American Leisure? A. Yes, I have.

Q. And how did you hear of them? A. It was one of the house stocks.

Q. And do you recall what its trading volume was? A. No, I don't.

Q. And is there a difference between the marketability of a—strike that.

Are you familiar with the concept of restricted stock as well as unrestricted stock? A. Yes, I am.

Q. And is there a difference in the marketability of the two? A. Yes, there is.

Q. And can you tell us in general layman's terms what that is? A. Basically, restricted stock, if it can be sold at all, is sold in a private transaction, because restricted stock normally is not freely tradeable in the open market and therefore, from what I know of the rules of the Securities and Exchange Commission, certain tests normally have to be [1279] met in order to transfer this type of stock, and therefore, the salability—the unsalability would reflect a lower market price or a negotiated price of the stock in a private transaction.

* * *

Donald W. Jennings—for Government—Direct

[1357] DONALD W. JENNINGS, called as a witness by the Government, being first duly sworn, testified as follows:

Direct Examination

* * *

[1368] Q. Now, did Mr. Rubin tell you anything regarding a business relationship between Bankers Trust and Tri-State Energy? A. Yes, he did.

Q. And can you tell us as best you recall, what he told you? A. Mr. Rubin said that Tri-State Energy had a great need for money, financing. And Mr. Rubin said that he had had a business relationship with Bankers Trust Company, and that he suggested that to Mr. Deaton, Mr. James of Tri-State Energy, that they try to arrange a loan through Bankers Trust Company, and he agreed to introduce them to people at Bankers Trust Company for that purpose.

Mr. Rubin told us that he and Mr. Deaton, at Tri-State Energy, made a trip to Bankers Trust Company to visit a Mr. Graziano, I believe it is, who had arranged for Mr. Rubin previously.

Mr. Rubin said that Mr. Graziano informed him and Mr. Deaton that the type of loan they were seeking was not within his purview, and Mr. Rubin said that Mr. Graziano introduced he and Mr. Deaton to a Mr. Ludwig who handled corporate loans.

* * *

[1374] A. The first meeting, according to my notes, where Mr. Rubin mentioned All States Life Insurance was the meeting of January 9, 1975.

Q. Was it mentioned at subsequent points as well? A. Yes, it was.

Q. What did he tell you about All States Life Insurance? A. Well, Mr. Rubin said several things about All States Life Insurance stock. He said that it was pledged by Tri-State Energy with Bankers Trust Company. He said that All States Life Insurance originally came through Mr. Deaton.

We asked him how Mr. Deaton acquired the shares of All States Life Insurance and he said that he didn't know but he believed that it was a deal between Deaton and Mr. Berg of All States Life Insurance and he believes that Mr. Deaton paid Mr. Berg in some way.

Q. Who believed— A. Mr. Rubin believed that Mr. Deaton had paid Mr. Berg for the issuance of All States Life Insurance shares.

Q. When you say paid, did Mr. Rubin indicate what he [1375] meant by that? A. Mr. Rubin didn't say that he knew that Mr. Deaton paid Mr. Berg, he said it was his feeling that Mr. Deaton had paid Mr. Berg for the issuance of the shares.

Q. Do you mean paid in what fashion, to the company or what? A. To the best of my recollection, Mr. Rubin indicated that Mr. Deaton had paid money personally to Mr. Berg, not to All States Life Insurance Company.

Q. To ask the question Mr. Bender is putting, do you mean under the table? A. Mr. Rubin didn't say that he paid him under the table. He didn't describe the nature of the payment.

Q. But that it was a "personal" payment; correct? A. It was my feeling that Mr. Rubin was saying that it was a personal payment.

Q. From sitting there and listening to what Mr. Rubin said? A. Yes, from listening to what Mr. Rubin said.

Q. Did he say whether he, Mr. Rubin, ever met Mr. Berg? A. To the best of my recollection, Mr. Rubin said that Mr. Berg visited the offices of Tri-State Energy on at least one occasion and that he had met him at that time.

[1376] Q. Did Mr. Rubin discuss anything regarding negotiations? A. Yes, Mr. Rubin said that at one time he was negotiating with Mr. Berg for the acquisition of 10 thousand shares of All States Life Insurance on behalf of Tri-State Energy.

Q. He, Mr. Rubin, was negotiating with Mr. Berg? A. He was negotiating with Mr. Berg, yes.

Q. When you say "he," if you can clarify it, it will make it easier for us all.

Did Mr. Rubin say anything regarding a Jerry Marshall? A. Yes, he did.

Mr. Rubin—

> Mr. Bender: Can I interrupt to ask whether we're referring to February 4, 1975?
>
> Ms. Neugarten: As to All States he said the first reference was January 9th and it occurred, he thought, at every meeting.
>
> Mr. Bender: I thought he said February 14th and then it occurred at other meetings.

Q. Did I state it incorrectly? A. You're right.

> Mr. Bender: I'm wrong then.

[1377] Q. On January 9, 1975, do you recall whether the date on the note for that meeting reflects '74 or '75? A. The date reflected is 1974.

Q. And it is your recollection that the meeting in fact took place when? A. In 1975.

Q. I believe I had asked you about Jerry Marshall. A. Yes. Mr. Rubin said that he had met Mr. Marshall while he was associated—while Mr. Rubin was associated with North American Planning, and that Mr. Marshall on one occasion had come to the offices of Tri-State Energy and raised a question concerning the possibility of Tri-State Energy being able to help him with some financing.

Q. Did Mr. Rubin say what business Mr. Marshall was in? A. Mr. Rubin said that Mr. Marshall was a stockbroker.

Q. Please continue. A. Mr. Rubin said that he introduced Mr. Marshall to Mr. Deaton and that Mr. Deaton tried to arrange a lease buy-back arrangement with Mr. Marshall with some company in Chicago for financing purposes and he said that this deal did not go through.

He said that on another occasion Mr. Deaton came [1378] to Mr. Rubin and requested that he place an order for 100 shares of All States Life Insurance stock through the firm of Marshall, Murray & Co., which is Jerry Marshall's brokerage firm.

He said that he asked Mr. Deaton, "Why do you want me to do this; what can't you do it yourself?" And he said that Mr. Deaton told him that Tri-State Energy has a substantial interest in All States Life Insurance stock and it wouldn't look right for him to place the order.

Q. For him, Mr. Deaton? A. For Mr. Deaton to place the order. He said that Mr. Deaton gave him a check for $2,100.

[1379] Q. Who gave who the check? A. Mr. Deaton gave Mr. Rubin a check for $2100 and that he indicated on the check that it was for another amount, $3800 or 3800-some odd dollars partial payment for some other purpose.

And Mr. Rubin cashed this check and issued his personal check to Marshall, Murray & Company for $2100.

Mr. Rubin said that he asked Mr. Deaton why he wanted to purchase this 100 shares of All States stock and Mr. Deaton, according to Mr. Rubin, said to him that he wanted the price of All States stock, $21 a share, to appear in the National Quotation Bureau's pink sheets so that the bank or banks could refer to these pink sheets in determining the value or a value for All States stock.

During this conversation Mr. Rubin said that Mr. Deaton also said that he wanted this price to appear so that the banks would be able to place a value on it for his purposes and also for the purposes of Mr. Ooms, who was obtaining loans using All States Life Insurance as collateral around the country.

Q. For Tri-State? A. I don't believe he said why Mr. Ooms was obtaining the loans.

[1380] Q. In interviews that you attended did Mr. Rubin at any point discuss what kind of stock All States was? A. Yes, he did. On one occasion—

Mr. Bender: Can we have a date?

Q. If you recall the date tell us. A. I believe it was January 1975. I had a discussion with Mr. Rubin concerning All States Life Insurance stock.

Q. Can you relate to us what that was? A. I asked Mr. Rubin if he didn't think that the stock that was pledged as collateral with Bankers Trust Company should have had a legend placed on the face of the certificates, a restrictive legend. Mr. Rubin said to me at that time that he didn't know if it should have had a restrictive legend or not. At that point I pointed out to Mr. Rubin that he was a principal and a registered broker dealer

and it was a publicly-owned company, that he was a CPA, that he was an attorney, that he was a principal in another large firm, Tri-State Energy, and that he had substantial experience in buying and selling stocks and to me it should appear that he shoudl be aware that a legend should appear on that stock.

> Mr. Bender: I object to this unless Mr. Jennings is actually telling the Court and the jury and all [1381] of all that this is exactly or in substance what he told Mr. Rubin, not his own operation of his own mind.

Q. I quite agree, is that what you told Mr. Rubin? A. That is the substance of what I told Mr. Rubin.

Q. Did he respond? I don't mean to cut you off. A. At this point Mr. Rubin became visibly upset with my question and he mentioned the fact that he had two small children, a sick wife, he was having a tough time finding employment.

Other than that he didn't respond to my question as to whether or not there should have been a legend or if he thought there should have been a legend on the face of those certificates that were pledged as collateral.

> Mr. Bender: I move to strike that statement that he made to Mr. Rubin. We are not being given a conversation that he had where Mr. Rubin made statements and the whole purpose of this is to indicate that Mr. Rubin made statements which the Government is claiming are in issue. This man's statements are not certainly admissible any more than a statement by the prosecutor as to a question to ask the witness.
>
> The Court: I don't know what you have in [1382] mind specifically.

Mr. Bender: This statement he says he made. I made a statement, he says, to Mr. Rubin, that you were a principal and a broker dealer, that you were a CPA, you were an attorney, you were an experienced individual and you should have known something about All States stock. And what did Mr. Rubin say? He said nothing about whether he should have known or didn't. All he says that he was visibly sick or he was visibly annoyed, his wife was sick and that he was unemployed.

The Court: He is telling us what occurred, that is what Rubin said and what he said, is that right?

The Witness: Yes.

The Court: What is the objection?

Mr. Bender: The objection is that I think the jury should be advised that what this witness from his own mind concluded of what Mr. Rubin's knowledge should have been is not evidence. It is only what comes out of Mr. Rubin's own mouth.

The Court: We went over that before. That was your prior objection and he said that was in substance what he, the witness, told Mr. Rubin.

Let's proceed.

Q. Did Mr. Rubin at any point tell you how much or [1383] what quantity of All States stock Tri-State had? A. To the best of my recollection, Mr. Rubin said that Tri-State Enegry had between 35 and 45,000 shares of All States stock.

* * *

Q. Do you recall whether Mr. Rubin told you anything about a company called American Leisure Corporation? A. Yes, he did. Mr. Rubin said that during his associ-

ation with North American Planning Corporation he had occasion to meet a Mr. Jack Lipsitz, who at one time had been a wealthy person and who was a person that dealt in what he called junk stocks.

[1384] Q. That is what Mr. Rubin said? A. That is what Mr. Rubin said. Mr. Rubin said that he had been requested by Mr. Deaton to seek public companies on behalf of Tri-State Energy.

Q. That he, Mr. Rubin, had been requested? A. He, Mr. Rubin, had been requested by Mr. Deaton to seek publicly-owned companies on behalf of Tri-State Energy and that Mr. Jack Lipsitz controlled American Leisure, which was a publicly-owned shell and he said that he introduced Mr. Lipsitz to Mr. Deaton and that as a result of that introduction Tri-State Energy acquired certain shares of American Leisure and that Tri-State Energy exchanged certain of their coal rights with American Leisure Corporation.

He also said that subsequently Tri-State Energy pledged these shares of American Leisure with Bankers Trust Company as collateral for their loans.

Q. Did he at any point—I am sorry? A. He indicated or he said, to the best of my recollection, that these shares of American Leisure that were pledged at Bankers Trust Company were restricted for sale. They bore a restrictive legend, restricted from sale to the public, and that Mr. Rubin in conversations with Mr. Ludwig said to Mr. Ludwig that he would try to [1385] have this restrictive legend removed.

Q. Did he tell you anything about the assets of American Leisure? A. Yes, Mr. Rubin did. He said that American Leisure was a shell, a shell corporation. To

the best of my recollection, I believe he said that they had a claim or a lawsuit against someone. That was basically the substance of their assets. But he also said that at one time American Leisure had had assets and that he himself had purchased an interest in American Leisure Corporation. He may have, to the best of my recollection, personally owned 50,000 shares of American Leisure Corporation.

Q. Did he indicate or say at what point these assets had been owned by American Leisure? A. It was prior to his conversations with Mr. Lipsitz concerning American Leisure establishing a relationship with Tri-State Energy.

* * *

[1394] Q. Now, did Mr. Rubin tell you anything about the stock of companies called Satellite Systems and Marlin Investment? A. Yes, he did. Mr. Rubin said that Tri-State Energy came to rent shares of Satellite Systems and Marlin Investments from—through negotiations with an attorney by the name of William Hamilton, who represented and worked with a person by the name of Peter Crosby.

After the negotiations for the rent of these securities, they were delivered to Tri-State Energy's offices, according to Mr. Rubin, by a Mr. Benjamin. He indicated that Satellite securities were listed in the Herald-Tribune European edition of the newspaper, and to the best of my recollection, Mr. Rubin said that both of these securities were registered in the name of Bachelor Investments and that Bankers Trust Company tried to have these shares transferred into their nominee's name, and that they were not able to do this.

Q. That was what Mr. Rubin told you? A. That's what Mr. Rubin said. Mr. Rubin said [1395] to the best of my recollection, the rental fee for these shares was 7½ per cent of the market value, or if they were sold, to the best of my recollection he said the price would be one-half of the bid price.

Q. Now, this word "rental" whose word is that? A. To the best of my recollection, that's Mr. Rubin's word.

Q. Now, as someone with experience in the SEC, are you familar with the concept of renting stock? A. Yes.

Q. And can you tell us what it means to rent stock? A. Well, if you wanted to—if you thought a stock would depreciate in value from its current price, you might want to borrow that stock from someone who owned it to sell it, and to buy it back at lower price and pay back that individual.

For the purpose of borrowing the stock, you would pay the lender a fee.

Q. And it remains the lender's stock, is that correct? A. It remains the lender' stock, and you can return the identical stock to the lender or the equivalent of that stock.

Q. In other security or whatever? [1396] A. It depends on the arrangement you would make with the lender. Normally speaking, you would return the stock in kind, not necessarily the same certificate, but you would return the stock in kind. It is possible to return, depending on your agreement with the lender, a stock of equivalent value.

The Court: Read that answer.

(Answer read.)

The Court: I don't understand that. Could you explain that in simpler language?

The Witness: I will try.

The Court: Buy it back at a lower price?

The Witness: Actually, what I am explaining is probably more akin to making what is called a short sale, which is selling a stock at one price in hopes of buying it back at a lower price, making a profit on the difference. In actual practice that's one way—one purpose for borrowing the stock, but also you could borrow a stock for any other purpose, to use as collateral for a loan, to use as part of your assets, or temporary business purposes.

It is almost like borrowing anything else of value, and normally speaking, when you borrow something of value, you have to pay something for it.

[1397] The Court: And you would borrow it and sell it and then buy it back?

The Witness: In a short sale, that's what you would do. You would borrow it, sell it, and then hopefully buy it back at a lower price, but for ordinary business purposes you could borrow it and use it as collateral for a loan or use it to have it appear on your balance sheet to make your assets appear to be greater, for cosmetic purposes you might say.

[1398] Q. Let's see if we can illustrate that first.

First, the one that's more like a short sale, if you borrowed a stock that was then $10— A. Yes.

Q. —you would hope to sell it at 10 or more, buy it from someone in the market or whatever at less than $10— A. If your expectations were realized and the stock appreciated in value, you could buy. If you sell 100 shares at

10 and buy it back at 5, return the 100 shares to the owner, your profit would be $5 minus or $500 minus your rental fee.

Q. Now, after the stock Marlin and Satellite was obtained pursuant to thes rental agreement, did Mr. Rubin tell you of any subsequent conversations involving Mr. Hamilton, Crosby or Benjamin? A. Yes, he did.

Q. Do you recall what that was? A. Yes, I do.

Mr. Rubin said he received at Tri-State Energy's offices several calls from Mr. Hamilton and from Mr. Crosby wanting to know where the money was, their rental fee for the Marlin Investments and Satellite Systems.

Q. And that was the telephone call? A. Telephone calls. And he said that Mr. Benjamin [1399] made a personal appearance at Tri-State Energy's offices requesting the rental fee.

Q. As part of the same effort to get the rental fee? A. As part of the same effort to get the rental fee and at this point when Mr. Benjamin came to the office, Mr. Deaton was not there, acoerding to Mr. Rubin, Mr. Deaton was in Florida, and Mr. Rubin—to the best of my knowledge, either Mr. Rubin was instructed to tell Mr. Benjamin or he told Mr. Benjamin on his own behalf that Satellite Systems and Marlin had not been used for loan collateral purposes.

* * *

[1401] Q. Do you recall Mr. Rubin telling you anything about substitution of collateral in Bankers Trust? A. Yes, I do.

Mr. Rubin said that two former members of the staff of North American Planning Corporation arranged for Tri-State Energy to purchase—to the best of my knowledge it was 100 thousand shares of a publicly owned

company, at a cost of $100 thousand plus a $40 thousand commission. He said that these shares were placed with Bankers Trust Company as collateral for their loans and that shortly thereafter, the president of the issuing company of these shares requested that the shares be returned to the company, and the president [1402] of this company also made a request to the Securities and Exchange Commission that they suspend trading in the shares of his company because he could not determine the number of shares that were outstanding.

Mr. Rubin said that these shares were returned to the company and that the president returned to Tri-State Energy $100 thousand. He said that efforts were made by Tri-State Energy to obtain the $40 thousand but that the company declined, indicating that they were not concerned with the commission of $40 thousand.

Q. Did he tell you anything about substitute stock? A. Yes, he did. He said that these two individuals that had arranged to get this 100 thousand shares of publicly owned stock, arranged to obtain a substitute stock.

Q. Did he tell you whether that was ever paid for? A. May I refer to my notes?

Q. Certainly.

(Pause.)

A. After reviewing my notes, to the best of my knowledge, Mr. Rubin said that the stock that was used to replace the collateral was not paid for.

Mr. Bender: I didn't get that.
The Court: Read the answer.

(Record read.)

[1403] Mr. Bender: May we ask what note, particular notes he reviewed for that recollection to be refreshed?

The Witness: These are the notes of February 14, 1975.

Mr. Bender: Thank you.

A. (Continuing) Mr. Rubin said that the stock was not paid for and that after a few weeks persons described as "hard guys" paid a visit to the offices of Tri-State Energy.

Mr. Bender: I move to strike that, your Honor.

The Court: Is this something that Mr. Rubin said?

Mr. Bender: But, even if he did—even if he says he did say it, I think it is totally irrelevant, inconsistent and it can give a wrong impression.

Ms. Neugarten: Your Honor—

The Court: Well, yes?

Ms. Neugarten: The testimony I believe of Mr. Keating was that he was told that the stocks were always obtained by swapping coal rights, and I think the government is entitled to prove through various of Mr. Rubin's statements whether that was a correct or a false representation as made to Mr. Keating.

The Court: I see.

[1404] Mr. Bender: I have no objection to trying to prove through any admissions something that's material to what Mr. Keating said, but I think the use of words "hard guys," I mean, why should we be afflicted with the inferences that can be drawn

from that kind of description? I don't think really it belongs in the case.

The Court: Is this choice of words Mr. Rubin's?

The Witness: Your Honor, I have written here "hard guys."

Mr. Bender: Just a moment, please.

The Court: The question is, are those words Mr. Rubin's?

The answer to that is yes or no. Are those words, "hard guys," something Mr. Rubin said?

The Witness: To the best of my recollection, your Honor, those are the words that Mr. Rubin used.

* * *

[1490] Ms. Neugarten: With Mr. Bender's permission, rather than read out the words of the exhibits, I would like to simply indicate that as to 151 through 156, as to companies whose names I will read from the exhibits, they indicate that a diligent search has been made of records of the Securities and Exchange Commission and there has been no record found of any registration of the stock of those companies.

If you think that is an unfair summary—

Mr. Bender: No, that will be fine.

Ms. Neugarten: The names of the companies are for 151, Management Dynamics, Inc.

152, Management Dynamics Incorporated, written out.

153, Marlin Investment Company.

154, All States Life Insurance Company.

155, Satellite Systems Corporation.

156, American Leisure Corporation.

Now, as to 157, which does indicate something [1491] was done or found, I will read simply what was found and not the certification of the certifying official.

A registration statement on Form 15 for Incorporated Investment Companies was filed with this Commission July 31, 1935, by General Investment Corporation pursuant to the provisions of the Securities Exchange Act of 1934 via 1/1/1953.

A registration statement on Form 23 for successor issuers was filed with this Commission October 10, 1944, by General Investment Corporation, pursuant to the provisions of the Securities Exchange Act of 1934, filed 1/31/59.

I further attest that a diligent search has this day, May 2, 1978, been made of the books and records of this Commission and the books and records do not disclose that any registration statement other than the ones described above have been filed with this Commission under the name General Investment Corporation pursuant to the provisions of any of the Acts administered by this Commission.

* * *

William Robert Rubin—Petitioner—Direct

[1774] WILLIAM ROBERT RUBIN, called as a witness on his own behalf, having first been duly sworn, testified as follows:

(Direct Examination)

* * *

[1920] I didn't even sign all the notes.

Q. Did you sign a confession of judgment, acknowledging the debt? A. Yes, I did. And I signed a confession of judgment. I certainly did; for over a half million dollars, to be precise, with interest added, and attorneys' fees added.

Ms. Neugarten: Mark these, please.

(Government's Exhibits 163 and 164 were marked for identification.)

Q. I am handing you what have been marked as Government's Exhibits 163 and 164 for identification. Do these appear to be, in the case of 163, a photocopy of an affidavit of confession of judgment, on a so-called Blumberg form; and 164, a letter acknowledged by you, as to your debt as to Bankers Trust? A. Yes.

Q. Both documents bear your signature? A. Yes.

Ms. Neugarten: At this time the government offers Exhibits 163 and 164 for identification into evidence.

Mr. Bender: I have no objection, your Honor.

* * *

William Robert Rubin—Petitioner—Cross

(Cross Examination)

[2077] Q. Do you recall being asked on Friday both in direct examination and cross-examination regarding conversations you had with Mr. Pinto and representatives of the SEC concerning All States stock? A. Yes.

Q. Is it your testimony that at no time did either Mr. Pinto, a Mr. Pilpel, or anyone else from the NSAD ever tell you that the All States stock might be restricted? [2078] A. I don't remember Mr. Pilpel but I remember Mr. Pinto very well. I believe it was my testimony that they felt that the stock was thinly traded. At that particular time I do not recall them telling me about anything being restricted. They might have said that there is a question, but I don't know if I was ever directly, specifically, told that that is restricted stock.

Q. They might have said there was a question as to whether it was restricted? A. They might have. It could have been a question in everyone's minds.

Q. You understood there was a question whether it might not in fact be restrictive, is that correct? A. That's not absolutely correct.

Q. You had some familiarity with the laws and the rules governing controlled stock, is that correct? A. Yes.

Q. You understood that a substantial block would be very apt to be restricted stock? A. Unless there was a shelf registration or something like that. There might have been a suspicion, but it was not fact at that time. I could have suspected it.

• • •

Government Exhibit 1

30 Day Promissory Note for $50,000, dated October 20, 1972

[PHOTOSTAT]

(Opposite) ☛

301.38 49698.62

$ 50,000 — New York, N. Y., OCT 20 19 71

ONE (1) MONTH after date, for value received, the undersigned promises to

pay to the order of BANKERS TRUST COMPANY 1-102

FIFTY THOUSAND AND 00/100 Dollars

at the office of BANKERS TRUST COMPANY at NEW 27TH AVE, N. Y.

Upon non-payment when due of this note or of any of the other liabilities of the undersigned, or if it appears at any time that any representation in any financial or other statement of the undersigned, delivered to the Bank by or on behalf of the undersigned, is untrue or incomplete, or if an adverse change shall occur in the financial condition of the undersigned, or if the undersigned or any endorser or guarantor of this note shall die or (being a partnership or corporation) shall be dissolved, or shall become insolvent (however evidenced), or upon the suspension of business of the undersigned, or upon the issuance of any warrant, process, or order of attachment, garnishment or other lien and/or the filing of a lien as a result thereof against any of the property of the undersigned, or upon the commencement of any proceeding under, or the use of any of the provisions of, Article 52 of the New York Civil Practice Law and Rules by any judgment creditor against the undersigned or with respect to any property of the undersigned, or upon the making by the undersigned or any endorser or guarantor of this note of an assignment for the benefit of creditors, or upon a trustee or receiver being appointed for the undersigned or any endorser or guarantor of this note or for any of the property thereof, or upon any proceedings being commenced by or against the undersigned or any such endorser or guarantor under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, receivership, liquidation or dissolution law or statute, — then and in any such event, all liabilities of the undersigned shall become at once due and payable, without notice, presentment or demand of payment, which are hereby expressly waived. No delay on the part of the Bank in exercising any of its options, powers or rights, or partial or single exercise thereof, shall constitute a waiver thereof. If this note is not paid when due, the undersigned and each endorser each agrees to pay interest on the unpaid balance at the maximum rate of interest permitted by law and all costs and expenses of collection including attorneys' fees of 15% of the unpaid balance of the loan evidenced hereby. The undersigned, if more than one, shall be jointly and severally liable hereunder and the term "undersigned" wherever used herein shall mean the undersigned or any one or more of them.

Due 11/20

4 1 7 9 4 9 3 5

Insert your Bankers Trust Company checking account number here

23917 710

Jeff Deaton Sec. & Treas.

E. S.

F2137—ABC 4-71

Government Exhibit 7
Blank Stock Power

[PHOTOSTAT]

(Opposite ☛)

STOCK POWER

FOR VALUE RECEIVED, _____

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

hereby sell, assign and transfer unto _____ _____

_____

_____

(_____) *Shares of the* _____ *Capital Stock of* _____

_____ *standing in my(our) name(s)*

on the books of said Corporation represented by Certificate(s) No(s). _____

herewith, and do hereby irrevocably constitute and appoint _____

_____ *attorney to transfer the*

said stock on the books of said Corporation with full power of substitution in the premises.

Dated _____

TRI-STATE ENERGY, INC.

C. W. Deaton

C.W. Deaton, Secretary-Treasurer

In presence of

_____

CHELSEA NATIONAL BANK
SIGNATURE GUARANTEED

ASSISTANT VICE PRESIDENT

7

Government Exhibit 8

Blank Stock Power

[PHOTOSTAT]

(Opposite) ☛

STOCK POWER

FOR VALUE RECEIVED, _____

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

hereby sell, assign and transfer unto _____ _____

_____

_____

(_____) *Shares of the* _____ *Capital Stock of* _____

_____ *standing in my(our) name(s)*

on the books of said Corporation represented by Certificate(s) No(s). _____

herewith, and do hereby irrevocably constitute and appoint _____

_____ *attorney to transfer the*

said stock on the books of said Corporation with full power of substitution in the premises.

Dated _____

TRI-STATE ENERGY, INC.

C. W. Dean

C.W. Dean, Secretary-Treasurer

In presence of

_____

CHELSEA NATIONAL BANK
SIGNATURE GUARANTEED

ASSISTANT VICE PRESIDENT

8

Government Exhibit 11

3 Month Promissory Note for $50,000, dated November 20, 1972

[PHOTOSTAT]

(Opposite) ☛

694.44 49 105.51

$ 50,000—

New York, N. Y., NOV 20 19 72

THREE (3) MONTHS after date, for value received, the undersigned promises to

pay to the order of BANKERS TRUST COMPANY

FIFTY THOUSAND AND 00/100 Dollars

at the office of BANKERS TRUST COMPANY at 280 PARK AVE, N. Y.

Upon non-payment when due of this note or of any of the other liabilities of the undersigned, or if it appears at any time that any representation in any financial or other statement of the undersigned, delivered to the Bank by or on behalf of the undersigned, is untrue or incomplete, or if an adverse change shall occur in the financial condition of the undersigned, or if the undersigned or any endorser or guarantor of this note shall die or (being a partnership or corporation) shall be dissolved, or shall become insolvent (however evidenced), or upon the suspension of business of the undersigned, or upon the issuance of any warrant, process, or order of attachment, garnishment or other lien and/or the filing of a lien as a result thereof against any of the property of the undersigned, or upon the commencement of any proceeding under, or the use of any of the provisions of, Article 52 of the New York Civil Practice Law and Rules by any judgment creditor against the undersigned or with respect to any property of the undersigned, or upon the making by the undersigned or any endorser or guarantor of this note of an assignment for the benefit of creditors, or upon a trustee or receiver being appointed for the undersigned or any endorser or guarantor of this note or for any of the property thereof, or upon any proceedings being commenced by or against the undersigned or any such endorser or guarantor under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, receivership, liquidation or dissolution law or statute, — then and in any such event, all liabilities of the undersigned shall become at once due and payable, without notice, presentment or demand of payment, which are hereby expressly waived. No delay on the part of the Bank in exercising any of its options, powers or rights, or partial or single exercise thereof, shall constitute a waiver thereof. If this note is not paid when due, the undersigned and each endorser each agrees to pay interest on the unpaid balance at the maximum rate of interest permitted by law and all costs and expenses of collection including attorneys' fees of 15% of the unpaid balance of the loan evidenced hereby. The undersigned, if more than one, shall be jointly and severally liable hereunder and the term "undersigned" wherever used herein shall mean the undersigned or any one or more of them.

Due 4 1 7 9 4 9 3 5

25123 Insert your Bankers Trust Company checking account number here

BANKERS TRUST COMPANY 1-10.3 CAPITAL

TREAS

F2137—ABC 4-71

Government Exhibit 12,

3 Month Promissory Note for $50,000, dated November 22, 1972, Extending the October 20, 1972 Note for 3 Months

[PHOTOSTAT]

(Opposite) ☛

$ 50,000 00/100

New York, N. Y., Nov 22 1972

3 months after date, for value received, the undersigned promises to pay to the order of BANKERS TRUST COMPANY

Fifty Thousand 00/100 Dollars

at the office of BANKERS TRUST COMPANY at 15 E 57th Street, N. Y.

Upon non-payment when due of this note or of any of the other liabilities of the undersigned, or if it appears at any time that any representation in any financial or other statement of the undersigned, delivered to the Bank by or on behalf of the undersigned, is untrue or incomplete, or if an adverse change shall occur in the financial condition of the undersigned, or if the undersigned or any endorser or guarantor of this note shall die or (being a partnership or corporation) shall be dissolved, or shall become insolvent (however evidenced), or upon the suspension of business of the undersigned, or upon the issuance of any warrant, process, or order of attachment, garnishment or other lien and/or the filing of a lien as a result thereof against any of the property of the undersigned, or upon the commencement of any proceeding under, or the use of any of the provisions of, Article 52 of the New York Civil Practice Law and Rules by any judgment creditor against the undersigned or with respect to any property of the undersigned, or upon the making by the undersigned or any endorser or guarantor of this note of an assignment for the benefit of creditors, or upon a trustee or receiver being appointed for the undersigned or any endorser or guarantor of this note or for any of the property thereof, or upon any proceedings being commenced by or against the undersigned or any such endorser or guarantor under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, receivership, liquidation or dissolution law or statute, — then and in any such event, all liabilities of the undersigned shall become at once due and payable, without notice, presentment or demand of payment, which are hereby expressly waived. No delay on the part of the Bank in exercising any of its options, powers or rights, or partial or single exercise thereof, shall constitute a waiver thereof. If this note is not paid when due the undersigned and each endorser each agrees to pay interest on the unpaid balance at the maximum rate of interest permitted by law and all costs and expenses of collection including attorneys' fees of 15% of the unpaid balance of the loan evidenced hereby. The undersigned, if more than one, shall be jointly and severally liable hereunder and the term "undersigned" wherever used herein shall mean the undersigned or any one or more of them.

Due 11/22/73

4	1	7	9	4	9	3	5

Insert your Bankers Trust Company checking account number here

25122

F2137—ABC 4-71

Government Exhibit 14

3 Month Promissory Note for $100,000, dated November 30, 1972

[PHOTOSTAT]

(Opposite) ☛

$ 100,000 00/100 — 90 — 1.1.72 — 98250.01

New York, N.Y., November 30 1972

3 months after date, for value received, the undersigned promises to pay to the order of BANKERS TRUST COMPANY One Hundred Thousand 00/100 Dollars

at the office of BANKERS TRUST COMPANY at 500 7th Ave, N. Y.

Upon non-payment when due of this note or of any of the other liabilities of the undersigned, or if it appears at any time that any representation in any financial or other statement of the undersigned, delivered to the Bank by or on behalf of the undersigned, is untrue or incomplete, or if an adverse change shall occur in the financial condition of the undersigned, or if the undersigned or any endorser or guarantor of this note shall die or (being a partnership or corporation) shall be dissolved, or shall become insolvent (however evidenced), or upon the suspension of business of the undersigned, or upon the issuance of any warrant, process, or order of attachment, garnishment or other lien and/or the filing of a lien as a result thereof against any of the property of the undersigned, or upon the commencement of any proceeding under, or the use of any of the provisions of, Article 52 of the New York Civil Practice Law and Rules by any judgment creditor against the undersigned or with respect to any property of the undersigned, or upon the making by the undersigned or any endorser or guarantor of this note of an assignment for the benefit of creditors, or upon a trustee or receiver being appointed for the undersigned or any endorser or guarantor of this note or for any of the property thereof, or upon any proceedings being commenced by or against the undersigned or any such endorser or guarantor under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, receivership, liquidation or dissolution law or statute, — then and in any such event, all liabilities of the undersigned shall become at once due and payable, without notice, presentment or demand of payment, which are hereby expressly waived. No delay on the part of the Bank in exercising any of its options, powers or rights, or partial or single exercise thereof, shall constitute a waiver thereof. If this note is not paid when due, the undersigned and each endorser each agrees to pay interest on the unpaid balance at the maximum rate of interest permitted by law and the costs and expenses of collection including attorneys' fees of 15% of the unpaid balance of the loan evidenced hereby. The undersigned, if more than one, shall be jointly and severally liable hereunder and the term "undersigned" wherever used herein shall mean the undersigned or any one or more of them.

Due — 4 1 7 9 4 9 3 5 — 2/28

Insert your Bankers Trust Company checking account number here

25195

RECEIVED PAYMENT
LOAN DEPT.
FEB 28

ENDORSEMENT GUARANTEED
BANKERS TRUST COMPANY
NEW YORK

14

F2137—ABC 4-71

Government Exhibit 16

3 Month Promissory Note for $275,000, dated December 6, 1972

[PHOTOSTAT]

(Opposite) ☛

$ 225,000.00 / 4814.94 / 220187.51

New York, N. Y., December 6 1972

3 months after date, for value received, the undersigned promises to pay to the order of BANKERS TRUST COMPANY Two Hundred Seventy Five Thousand 00/100 Dollars

at the office of BANKERS TRUST COMPANY at 550 5th Ave., N. Y.

Upon non-payment when due of this note or of any of the other liabilities of the undersigned, or if it appears at any time that any representation in any financial or other statement of the undersigned, delivered to the Bank by or on behalf of the undersigned, is untrue or incomplete, or if an adverse change shall occur in the financial condition of the undersigned, or if the undersigned or any endorser or guarantor of this note shall die or (being a partnership or corporation) shall be dissolved, or shall become insolvent (however evidenced), or upon the suspension of business of the undersigned, or upon the issuance of any warrant, process, or order of attachment, garnishment or other lien and/or the filing of a lien as a result thereof against any of the property of the undersigned, or upon the commencement of any proceeding under, or the use of any of the provisions of, Article 52 of the New York Civil Practice Law and Rules by any judgment creditor against the undersigned with respect to any property of the undersigned, or upon the making by the undersigned or any endorser or guarantor of this note of an assignment for the benefit of creditors, or upon the application for, consent to, or acquiescence in the appointment of a receiver being appointed for the undersigned or any endorser or guarantor of this note or for any of the property thereof, or upon any proceedings being commenced by or against the undersigned or any such endorser or guarantor under any bankruptcy, reorganization, arrangement of debt, insolvency, readjustment of debt, receivership, liquidation or dissolution law or statute, — then and in any such event, all liabilities of the undersigned shall become at once due and payable, without notice, presentment or demand, all of which are hereby expressly waived. No delay on the part of the Bank in exercising any of its options, powers or rights, or partial or single exercise thereof, shall constitute a waiver thereof. If this note is not paid when due, the undersigned and each endorser each agrees to pay interest on the unpaid balance at the maximum rate of [illegible] per annum permitted by law and all costs and expenses of collection including attorneys' fees of 15% of the unpaid balance of the loan evidenced hereby. The undersigned, if more than one, shall be jointly and severally liable hereunder and the term "undersigned" wherever used herein shall mean the undersigned or any one or more of them.

RECEIVED PAYMENT
LOAN DEPT.
DEC 8 1972
ENDORSEMENT GUARANTEED
BANKERS TRUST COMPANY
NEW YORK

Due 25650

4 1 7 9 4 9 3 5

Insert your Bankers Trust Company checking account number here

3 / 15 - STATE ENERGY INC. 16

F2137—ABC 4-71

Government Exhibit 19, Power of Attorney

POWER OF ATTORNEY

TO ENDORSE SECURITIES

KNOW ALL MEN BY THESE PRESENTS, that

I, ...
(Name)

residing at .....
(Address)

have made, constituted and appointed and by these presents do make, constitute and appoint BANKERS TRUST COMPANY, a New York corporation, my true and lawful attorney for me and in my name, place and stead and for my account and risk, with power to execute endorsements, assignments or other instruments of conveyance or transfer of certificates of stock or registered securities which it holds or may hold for me registered in my name, and to execute any necessary due bills, by signing my name only or by signing the same as my attorney in fact, as may be deemed by my said attorney to be necessary or desirable and proper in connection with the transfer of said securities.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 27th day of November 1972.

C. W. DEATON
C. W. Deaton (L.S.)
Treasurer

Government Exhibit 20, Corporate Resolution

CORPORATE RESOLUTION

TRANSFER OF SECURITIES

RESOLVED, that any.....of the following officers of this Corporation, to wit,

be and they hereby are authorized to sell, assign, transfer or dispose of any stocks, bonds or other securities now or hereafter owned or held by this Corporation.

I, C. W. Deaton secretary of Tri-State Energy Inc. hereby certify that the foregoing is a true copy of a resolution duly adopted by the Board of Directors of said Corporation at a meeting duly held the 7th day of December, 1972, at which a quorum was present, and that the same has not been repealed or amended and remains in full force and effect.

Dated: December 7th, 1972

C. W. DEATON

Secretary

Signature guaranteed by:

JOHN J. (Illegible)

(SEAL)

NOTE (1). The above form of resolution does not authorize a transfer into the individual name of any officer or director of the Corporation. Such a transfer must be specifically authorized by the Board of Directors.

NOTE (2). The signature of the officer certifying this resolution must be guaranteed by a commercial bank or trust company having a New York City corespondent, or by a member of the New York Stock Exchange.

Government Exhibit 21

Demand Note for $475.000, dated February 26, 1973

[PHOTOSTAT]

(Opposite) ☛

$475,000.00 New York, N. Y., February 26 1973

Demand after date, for value received, the undersigned promises to pay to the order of BANKERS TRUST COMPANY,

Four Hundred Seventy Five Thousand 00/100 Dollars

at the office of BANKERS TRUST COMPANY at 550 7th Ave., N. Y., and to pay interest on the unpaid principal amount hereof until maturity at the rate of 12 per cent. per annum payable on the _____ day of each month.

No. _____ Due _____

Tri-State Energy Inc

Leonard Jospin Pres.

(Please insert your Bankers Trust Company checking account number) 44 794 938

A.A. OTIER 25:19

F2139—4-71

Government Exhibit 28

Blank Stock Power

[PHOTOSTAT]

(Opposite) ☛

STOCK POWER

FOR VALUE RECEIVED, _____

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

hereby sell, assign and transfer unto _____ _____

_____

_____

(_____) *Shares of the* _____ *Capital Stock of* _____

_____ *standing in my(our) name(s)*

on the books of said Corporation represented by Certificate(s) No(s). _____

herewith, and do hereby irrevocably constitute and appoint _____

_____ *attorney to transfer the*

said stock on the books of said Corporation with full power of substitution in the premises.

Dated _____

_____

SIGNATURE GUARANTEED
NORTH AMERICAN PLANNING CORPORATION

In presence of

_____

SIGNATURE GUARANTEED
CHELSEA NATIONAL BANK

_____
Authorized Signature

28

Government Exhibit 29

Blank Stock Power

[PHOTOSTAT]

(Opposite) ☛

STOCK POWER

FOR VALUE RECEIVED, _____

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

hereby sell, assign and transfer unto _____ _____

_____

_____

(_____) *Shares of the* _____ *Capital Stock of* _____

_____ *standing in my(our) name(s)*

on the books of said Corporation represented by Certificate(s) No(s). _____

herewith, and do hereby irrevocably constitute and appoint _____

_____ *attorney to transfer the*

said stock on the books of said Corporation with full power of substitution in the premises.

Dated _____

_____

SIGNATURE

NORTH AMERICAN [illegible]

_____

SIGNATURE GUARANTEED

CHELSEA NATIONAL BANK

In presence of

_____

29

_____

Authorized Signature

Government Exhibit 30, Tri-State Energy Corporate Resolution, June 28, 1972

TRI-STATE ENERGY INC.
208 EAST MAIN STREET
WHITESBURG, KENTUCKY
ZIP: 41858

RESOLVED: That this is a duly authorized called meeting.

RESOLVED: That Leonard James, President, and/or C.W. Deaton, Secretary-Treasurer, are hereby authorized to sign any and all papers necessary to cause to be arranged a loan on ALL STATES INSURANCE COMPANY of ALABAMA stock.

Further be RESOLVED: That they, acting in their DULY elected offices, are authorized to do whatever is required to perfect such a loan, or loans.

IN WITNESS WHEREOF, I have hereunto set my hand as Secretary of said Corporation, and affixed the Corporation Seal this June 28, 1972.

TRI-STATE ENERGY, INC.
C. W. DEATON
Secretary-Treasuer

LEONARD JAMES
Pres.

CHELSEA-NATIONAL BANK
Signature Guaranteed
(ILLEGIBLE)
Assistant Vice President

Government Exhibit 37A

Stock Power

[PHOTOSTAT]

(Opposite) ☛

ERASURE GUARANTEED
BANKERS TRUST CO.

Authorized Signature

STOCK POWER

FOR VALUE RECEIVED, _____

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

hereby sell, assign and transfer unto _____

TRI STATE ENERGY INC.

230 PARK AVE NEW YORK 10017

( ) *Shares of the* _____ *Capital Stock of* MARLIN INVESTMENT COMPANY

_____ *standing in my(our) name(s)*

on the books of said Corporation represented by Certificate(s) No(s). 1121/4 & 5412

herewith, and do hereby irrevocably constitute and appoint _____

_____ *attorney to transfer the*

said stock on the books of said Corporation with full power of substitution in the premises.

Dated 12/22/67

BACHELOR INVESTMENTS

_____

In presence of

Signature Guaranteed
CHEMICAL BANK
65th Street & Broadway
New York, N. Y.

_____

Authorized Signature

37A

Government Exhibit 37B
Undated Stock Power

[PHOTOSTAT]

(Opposite) ☛

STOCK POWER

FOR VALUE RECEIVED, _____

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

hereby sell, assign and transfer unto _____ _____

_____

_____

(_____) *Shares of the* _____ *Capital Stock of* MARLIN INVESTMENT COMPANY

_____ *standing in my(our) name(s)*

on the books of said Corporation represented by Certificate(s) No(s). _____

herewith, and do hereby irrevocably constitute and appoint _____

_____ *attorney to transfer the*

said stock on the books of said Corporation with full power of substitution in the premises.

Dated _____

BACHELOR INVESTMENTS

_____

Signature Guaranteed
CHEMICAL BANK
65th Street & Broadway
New York, N. Y.

In presence of

_____

37B

_____

Authorised Signature

©

Government Exhibit 37C
Undated Stock Power

[PHOTOSTAT]

(Opposite) ☛

STOCK POWER

FOR VALUE RECEIVED, _____

PLEASE INSERT SOCIAL SECURITY OR OTHER IDENTIFYING NUMBER OF ASSIGNEE

hereby sell, assign and transfer unto _____ _____

_____

_____

MARLIN INVESTMENT COMPANY

(_____) Shares of the _____ *Capital Stock of* _____

_____ *standing in my(our) name(s)*

on the books of said Corporation represented by Certificate(s) No(s). _____

herewith, and do hereby irrevocably constitute and appoint _____

_____ *attorney to transfer the*

said stock on thc books of said Corporation with full power of substitution in the premises.

BACHELOR INVESTMENTS

Dated _____

_____

Signature Guaranteed
CHEMICAL BANK
65th Street & Broadway
New York, N. Y.

37C

In presence of

_____

_____

Authorized Signature

Government Exhibit 38A, Undated Letter of Consent to Pledge Stock

LETTER OF CONSENT TO PLEDGE AND HYPOTHECATION

_____, N. Y.

_____, 19___

_____,

_____, New York

Dear Sirs:

The undersigned hereby certifies and agrees that Tri State Energy Inc. (hereinafter called the "borrower"), is authorized to pledge and hypothecate under the terms of your general loan and security agreement and/or security agreement note forms or otherwise, for the borrower's own account or otherwise, and the undersigned agrees that, when so pledged and hypothecated, the collateral (as hereinafter defined) shall secure, and that a security interest in the collateral and the proceeds thereof exist and will continue to exist in your favor as security for, any and all loans and/or advances at any time or from time to time made by you to the borrower, any present or future indebtedness or other obligations of the borrower to you, and all other indebtedness or other obligations, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, howsoever evidenced or acquired, and whether joint, several or joint and several, or independent of the borrower, and any renewals or extensions of any or all thereof (all being hereinafter called the "liabilities of the borrower"), the following described securities and/or personal property

Government Exhibit 38A

owned by the undersigned (hereinafter collectively called the "collateral"), to wit: 20,000 shares MARLIN INVESTMENT COMPANY.

The undersigned further certifies that the undersigned has good and valid legal title to the collateral, free and clear of all liens, charges, security interests, and incumbrances of any nature whatsoever.

You are hereby expressly authorized to accept and act upon any or all written instructions given to you either by the borrower or the undersigned regarding any sale or other dispositions of all or any part of the collateral, or any additions thereto, or substitutions therefor, or proceeds thereof, or any other collateral or security of the undersigned available to you, including deliveries or payments of the same or any part thereof, to or upon the order of either the borrower or the undersigned. Any additions, substitutions or proceeds of the collateral in any form whatsoever in the possession of either the undersigned or the borrower shall be held in trust for you.

The authorizations hereinbefore contained shall remain in full force and effect until receipt by you of written notice from the undersigned of the revocation or termination hereof; provided, however, that no revocation or termination hereof shall affect in any manner your rights arising hereunder with respect to liabilities of the borrower which shall have been created, contracted, assumed or incurred prior to receipt by you of written notice of such revocation or termination, or the liabilities of the borrower which shall have been created, contracted, assumed or incurred after receipt of such written notice pursuant to any agreement entered into by you prior to receipt of such written notice.

Government Exhibit 38A

The undersigned hereby agrees, for himself, his heirs, executors, legal representatives, successors and assigns, to hold you harmless in your reliance hereon, prior to your receipt of written notice of revocation or termination hereof, whether or not any or all the authorizations hereinbefore contained may theretofor have been terminated by operation of law or otherwise. Any action permitted hereby or under the terms and provisions of any instruments evidencing the liabilities of the borrower may be taken without notice to the undersigned. The undersigned hereby waives notice of default in the payment of any liabilities of the borrower, notice of sale or other realization upon the collateral or any part thereof, or any other notice or demand otherwise required to be given to or made upon upon the borrower or the undersigned by law, by the terms and provisions hereof, or by the terms and provisions of any instruments evidencing the liabilities of the borrower, or any notice or demand which you elect to give to or make upon the borrower.

No modifications or waiver of any of the provisions hereof shall be effective unless expressly stated in writing and signed for or on behalf of you and then only in the specific instance for which given. Each reference herein to the undersigned shall be deemed to include the undersigned's heirs, executors, legal representatives, successors and assigns.

Witness

(ILLEGIBLE)

(ILLEGIBLE)

Permanent Address

Government Exhibit 38A

(ILLEGIBLE)

(ILLEGIBLE)

Permanent Address

The undersigned, the borrower referred to in the foregoing agreement, hereby accepts notice of the execution and delivery thereof and of the terms and provisions thereof. The undersigned hereby agrees that you may at any time or from time to time accept payment from the person signing the foregoing agreement of all or any part of the liabilities of the borrower, as defined in the foregoing agreement, and/or transfer or assign any or all instruments evidencing such liabilities of the borrower and the collateral securing the same to said person or to anyone else, all without recourse to or/warranty by you. Any action permitted hereby or under the terms and provisions of the foregoing agreement or of any instruments evidencing said liabilities of the borrower may be taken without notice to the undersigned.

Witness

Permanent Address

(L.S.)

Permanent Address

Government Exhibit 47, Draft Memo of Bankers Trust Company, dated December 6, 1972

December 6, 1972

Tri-State Energy Inc.
230 Park Avenue
New York, New York 10017

NEW ACCOUNT

The subject was incorporated in the State of Kentucky in June, 1972 to engage in the exploration and production of natural resources in the energy field. It has a mineral interest in 9,800 acres of land which engineering reports indicate contain approximately twenty million tons of coal. The firm is in the process of auger and strip-mining these reserves in conformity with Federal and State reclamation statutes.

In addition to the coal mining operation, Tri-State has controlling interest (72%) in American Leisure Corp., an OTC traded holding company, which in turn owns 80% of General Oil and Gas Inc., a public utility operating in the State of Tennessee. The other 20% of General Oil is directly owned by Tri-State Energy. General Oil and Gas has approximately 330 billion cubic ft. of natural gas, which at today's price would have a recoverable value of $250MM. Our entree to the firm was through William Rubin, Vice President, who was well and favorably known to us as an accountant with the firm of Fred Landau & Co., C.P.A.'s.

We have advanced $475M O/P supported by $750M in marketable securities as lien collateral. In the near future, we expect the lien collateral to be replaced by a guaranteed Letter of Credit which will be opened in our favor to sup-

Government Exhibit 47

port the loan. Financial statements do not reflect operating results, as the firm only recently processed its first sales of coal to Continental Coal Corporation and Repoca Resources. These sales are expected to net the firm after expenses, $340M over the next three months. General Oil and Gas has also been active in the natural gas operation and is shortly expected to sign a large contract with Anhaeuser Busch Inc. to supply gas for its breweries throughout the

We feel our confidence here is well placed, and expect this account to grow into a profitable and sizeable business in the near future.

JJK
RJL/JJK/gms

Government Exhibit 48, Draft Memo of Bankers Trust Company, dated January 11, 1973

MEMORANDUM FOR CREDIT FILE

Name Date 1/11/73

TRI-STATE ENERGY, INC.
230 Park Avenue
New York, New York 10017

NEW ACCOUNT

The subject was incorporated in the State of Kentucky in June 1972 and is engaged in the production and exploration of natural resources in the energy field. The firm owns the mineral royalty interest on approximately 24 million tons of coal located in Neon, Kentucky, and is in the process of auger and strip mining these resources in conformity with Federal and State reclamation statutes. We were introduced to the firm by William Rubin, Vice President, who was well and favorably known to us when he was an accountant with the firm of Fred Landau & Co., C.P.A.'s.

While the coal mining operation is Tri-State's primary function, it also has controlling interest (72%) in an OTC traded holding company named American Leisure Corporation. American Leisure Corporation's primary asset is an 80% interest in General Oil and Gas Inc., a public utility located in Tennessee. The remaining 20% of General Oil is directly owned by Tri-State Energy.

General Oil and Gas operates as a public utility in the transmission, transportation, purchase, and sale of natural gas and its byproducts. It has leases on natural gas lo-

Government Exhibit 48

cated under approximately 215,000 acres in Scott and Morgan Counties, Tennessee. According to an engineering survey, a copy of which we have on file, the probable reserves of natural gas located in the aforementioned acreage is 320 billion cubic ft. which at today's price would have a recoverable value of $250MM.

We have on file a copy of the October 20, 1972 balance sheet of Tri-State Enegery Inc. prepared by Englander and Bernstein, C.P.A.'s. The exhibit indicates cash of $250M, accounts receivable Charter Financial Ltd. $7500M and inventory of coal at sidings $180M to pay current debt of $3.7MM, including provision for Federal and State Income Taxes of $3.2MM on the above mentioned receivable from Charter Financial Ltd. In this connection, it should be pointed out that the receivable represents the sale of 2.5 million tons of coal at $3. per ton; in place, to Charter Financial Ltd. and guaranteed by Home Life Insurance Co. of New York. This receivable represents a signed contract although the actual sale is not expected to be consummated until the end of February, 1973.

Long term debt was $638M reflecting a 5% installment note of $608M payable to All State Life Insurance Co. over a 10 year period amortized in equal installments of $67.5M per year. As collateral for the loan, the insurance company has security interest in approximately 675 thousand tons of coal.

In addition to the current assets listed above, the statement reflects investments in All State Life Insurance $728M, Bank Computer Network $125M, and American Leisure Corp. $2.5MM for a total of $3407M. The balance sheet therefore indicates a working capital of $7650M and a net worth of $7191M. It should be noted that for state-

ment purposes, the mineral royalty interest in the firm's coal fields is carried at $1.

While we realize that the balance sheet adds little to the credit evaluation because of its obvious deficiencies, we have advanced $475M O/P supported by approximately $750M in marketable securities in a lien collateral. The company had requested a 100% advance on the collateral to which we refused. When the advances were made, certain primary factors entered into our reasoning, the largest being favorable regard for Mr. Rubin and his insistance that the cash flow of the firm represented by the sale to Charter Financial Ltd. plus the sale of coal outright to utilities and industrial users nationwide would enable the firm to retire the advance by the end of February. Our initial loan to the company was for $50M and our position was increased as the firm processed its first sale of coal to Continental Coal Corp. and Repoca Resources. In addition, we had private conversations with an engineer representing a large European firm who informed us that a Letter of Credit would shortly be opened in seven figure proportions to cover the sale of coal to his company. With this in mind, the remaining advances were made.

Tri-State Energy is now in the final process of negotiations with Ohio Gas Company on a $241M drilling contract covering the General Oil and Gas property in Tennessee. Of this $241M, approximately $100M per month will be paid the firm for its own use and will not be associated with this drilling program. Part of these funds will be used to retire our loan.

Additional information has recently caused us to re-evaluate our thinking on this credit. We were recently informed by William Powderly that an unresolved overdraft was

Government Exhibit 48

outstanding at the Chemical Bank. We had no knowledge that an account at Chemical existed when the account opened. A subsequent investigation at the Chemical Bank revealed that the account was overdrawn for approximately $12M and was caused by a check which was returned from a bank in Louisiana. Mr. Anderson, account officer of the Chemical Bank * * * (277 Park Avenue) stated that the entire matter had been forwarded to his Legal Department. A subsequent conversation with the principals of Tri-State revealed that they had thought that an O/P note for the amount of the overdraft was put on in October and had a maturity of 120 days. They stated that they had no reason to think anything different since they had had no correspondence or phone conversations with anyone from Chemical Bank regarding the overdraft since October. They indicated that they would be in touch with Chemical and have the matter resolved at once. In addition to this unpleasantness, the firm despite our $475M advance is still in a very tight cash position, and we have had occasion to return a number of checks over the past two weeks. Predicated on those two factors, we informed Tri-State that we expect our loans to be repaid on or prior to maturity, and that we would only reevaluate the firm's position after we had been completely repaid. As additional support for our loan, we have received an additional $1MM in marketable securities thus bringing our collateral picture to $1.7MM and giving us, what we feel, is adequate protection. In addition, we hold the personal guarantees of the three principals involved.

JJK
Raymond J. Ludwig/John J. Keating/gms
Seventh Avenue Office

cc: Mr. Powderly
Mr. Volen

Government Exhibit 49A-7, Memo from John J. Keating to W. C. Powderly, dated February 2, 1973

MEMORANDUM

February 2, 1973

To
Mr. W. C. Powderly
Vice President
280 Park Avenue 2W

Re: Tri-State Energy Inc.

Pursuant to your phone conversation with Ray Ludwig, the following is a list of the side collateral which we hold in support of our loan to the subject:

175,000 shares of General Investment Corporation

50,000 shares of Satellite Systems Corporation

20,000 shares of Marlin Investment Company

2,000 shares of All State Life Insurance Co. Inc.

400,000 shares restricted—American Leisure Corporation

JOHN J. KEATING/gms
Seventh Avenue Office

Government Exhibit 49A-8, Draft Memo of Bankers Trust Company, dated January 11, 1973

MEMORANDUM FOR CREDIT FILE

Name: Tri-State Energy, Inc
230 Park Avenue
New York, New York 10017

Date: 1/11/73

NEW ACCOUNT

The subject was incorporated in the State of Kentucky in June 1972 and is engaged in the production and exploration of natural resources in the energy field. The firm owns the mineral royalty interest on approximately 24 million tons of coal located in Neon, Kentucky, and is in the process of auger and strip mining these resources in conformity with Federal and State reclamation statutes. We were introduced to the firm by William Rubin, Vice President, who was well and favorably known to us when he was an accountant with the firm of Fred Landau & Co., C.P.A.'s.

While the coal mining operation is Tri-State's primary function, it also has controlling interest (72%) in an OTC traded holding company named American Leisure Corporation. American Leisure Corporation's primary asset is an 80% interest in General Oil and Gas Inc., a public utility located in Tennessee. The remaining 20% of General Oil is directly owned by Tri-State Energy.

General Oil and Gas operates as a public utility in the transmission, transportation, purchase, and sale of natural gas and its byproducts. It has leases on natural gas located under approximately 215,000 acres in Scott and Morgan Counties, Tennessee. According to an en-

gineering survey, a copy of which we have on file, the probable reserves of natural gas located in the aforementioned acreage is 330 billion cubic ft. which at today's price would have a recoverable value of $250MM.

We have on file a copy of the October 20, 1972 balance sheet of Tri-State Energy Inc. prepared by Englander and Bernstein, C.P.A.'s. The exhibit indicates cash of $250M, accounts receivable Charter Financial Ltd. $7500M and inventory of coal at sidings $180M to pay current debt of $3.2MM on the above mentioned receivable from Charter Financial Ltd. In this connection, it should be pointed out that the receivable represents the sale of 2.5 million tons of coal at $3. per ton, in place, to Charter Financial Ltd. and guaranteed by Home Life Insurance Co. of New York. This receivable represents a signed contract although the actual sale is not expected to be consummated until the end of February, 1973.

Long term debt was $638M reflecting a 5% installment note of $608M payable to All State Life Insurance Co. over a 10 year period amortized in equal installments of $67.5M per year. As collateral for the loan, the insurance company has security interest in approximately 675 thousand tons of coal.

In addition to the current assets listed above, the statement reflects investments in All State Life Insurance $782M, Bank Computer Network $125M, and American Leisure Corp. $2.5M for a total of $3407M. The balance sheet therefore indicates a working capital of $7650M and a net worth of $7191M. It should be noted that for statement purposes, the mineral royalty interest in the firm's coal fields is carried at $1.

Government's Exhibit 49A-8

While we realize that the balance sheet adds little to the credit evaluation because of its obvious deficiencies, we have advanced $475M O/P supported by approximately $750M in marketable securities in lien collateral. The company had requested a 100% advance on the collateral to which we refused. When the advances were made, certain primary factors entered into our reasoning, the largest being farovable regard for Mr. Rubin and his insistance that the cash flow of the firm represented by the sale to Charter Financial Ltd. plus the sale of coal outright to utilities and industrial users nationwide would enable the firm to retire the advance by the end of February. Our initial loan to the company was for $50M and our position was increased as the firm processed its first sale of coal to Continental Coal Corp. and Repoca Resources. In addition, we had private conversations with an engineer representing a large European firm who informed us that a letter of Credit would shortly be opened in seven figures proportions to cover the sale of coal to his company. With this in mind, the remaining advances were made.

This is a very fluid situation at the present time. The company is in the process of negotiations on many fronts either or all of which will enable the firm to repay our loan and become a substantial depositor coincidental with the repayment of their debt to us. In connection with General Oil and Gas Inc.'s operation, the following factors are of prime importance:

1. The firm is in the final process of negotiations with Ohio Gas Co. on a $24MM drilling contract covering their Tennessee properties. The proposed contract covers a two year period at $1MM per month of which $100M per month is not associated with the

drilling program, and which the firm may use for working capital purposes.

2. Tri-State has been negotiating with Anheuser Busch Inc. to supply natural gas to run its Columbus, Ohio plant. They are interested in participating with Tri-State in a drilling and supply program which would accrue the firm money well into seven figure proportions. Specific details on this deal will be forthcoming at the signing of the contract. The contract date should occur within the next six weeks.

Tri-State's coal operation will shortly commence selling to Louisville Power and Light at the rate of 10,000 tons per week high grade coal. The coal will be sold at the price of $15 per ton, the sale of which will place the firm's cash flow position on a more permanent basis (spot sales had been the rule of thumb prior to this time) and eliminate their very tight cash position. As stated previously, the sale of coal in place to Charter Financial Ltd., a Bahamanian organization should be consummated by the end of February, at which time the firm will receive an up front payment of $500M.

For the record, the firm continues in a very tight cash position, and we have had occasion to return a number of checks over the past few weeks. However, we believe this will be a short run situation with the above referenced factors eliminating the cash bind shortly. If none of the aforementioned alternative sources of funds materialize, we have suggested to the firm that they explore other sources of financing. Since our Mining Group is not interested in coal receipt financing, the firm has explored this possibility with the Energy Groups of the Bank of New York and First National City, both of whom appear

Government's Exhibit 49A-8

to be receptive. We hold the personal guaranties of all principals involved and feel satisfied to continue on the present basis until the maturity of our notes are reached. As further support for our loan, the firm has recently given us an additional $1MM in side collateral represented by 50,000 shares of Satellite Systems Corporation, traded on a London OTC exchange for approximately $20. Our total marketable side collateral position now stands at approximately $1.7MM and we feel that we have adequate protection even though we do not envision being forced to sell these stocks at this time. At maturity, a further evaluation of our position will be made.

JJK
Raymond J. Ludwig/John J. Keating/gms
Seventh Avenue Office

cc: Mr. Powderly
Mr. Volen

Government Exhibit 49B-7, Letter from Jack Lifsitz to William R. Rubin, dated October 27, 1972

AMERICAN LEISURE CORPORATION
230 Park Avenue
New York 10017 - (212) 686-8050

October 27, 1972

Mr. William R. Rubin
230 Park Avenue
New York, New York 10017

Dear Mr. Rubin:

This will inform you that I will instruct the transfer agent to remove the legend on the 50,000 shares of common stock that you own and deliver to you free and unencumbered shares.

Very truly yours,

JACK LIFSITZ
Jack Lifsitz
President

JL:glc

Government Exhibit 49-58

International Advice Re: Satellite Systems Corp.

[PHOTOSTAT]

(Opposite) ☛

ADVERTISEMENT

International Stock Market

EUROBONDS

STRAIGHTS

Aer Lingus 81	101½	102½
Alfa Romeo 77	101	Bid
Bendix Int. 79	102	103
Borg Warner 79	103¼	104¼
Celanese Int. 82	95¼	96¼
Chevron Overs. 80	98	99
Citroën 82	94¾	95¾
Conoco 86	102½	103½
Continental Oil 86	101¾	102¾
Cyanamid 80	90¼	91¼
De Beers 82	91¾	92¾
Esso 86	104¾	105¾
Ford Intl. 81	105½	106½
General Mills 86	102½	103½
Honda 81	100	101
Mitsubishi 73	99½	Bid
Mobil 85	96¼	97¼
Nippon Electric 81	99¾	Bid
N. Amer. Rockwell Int. 73	99¼	Bid
Olivetti 85	107	108
Otis Elevator 85	105½	106½
Philip Morris 86	103½	104½
Procter & Gamble 82	96½	97½
Renault 82	95	96
Siemens West. Fin 85	108	109
Sumitomo Chem. 79	99½	101

SHARES

Holiday Trailer Lodges Int.	U.S.$	18½	19¾
Unibe Holdings S.A.	S.Fr.	1420	1425
Satellite Systems Corp.	U.S.$	20	20½

For information regarding membership and/or listing contact:

International Stock Market

1 Bartholomew Close,

London E.C.1, England.

Telephone: (1-236-3972.

49B-58

Government Exhibit 57, Investment Letter, General Investment Stock

INVESTMENT LETTER

Dear Sirs:

Shares	Certificate #	Registered To
200,000	#498 Thru 527	Tri-State Energy Inc.

I hereby certify and warrant that the above described shares of your already issued common stock of General Investment Corp., 2¢ par value per share, being transferred to me, were acquired by me for my own personal account for investment without any intention at the time of purchase of selling or distributing all or any part of the same.

I agree that I will not sell or distribute any of such shares except which may be legally sold or distributed without registration under the Securities Act of 1933, as amended, and/or federal statutes, or such shares shall have been so registered and are qualified and an appropriate prospectus shall then be in effect.

In connection with the foregoing, I consent to your marking the stock transfer book to indicate this investment intent and the restrictions on transfer contemplated hereby and to your placing a stop transfer order against said shares until the conditions set forth herein shall have been met.

Illegible, V.P.

Witness: C.W. Deaton
Illegible

Government Exhibit 65

Bankers Trust Company Notes, dated April 16, 1975 Re: Stocks and Loans, Tri-State Energy Company

[PHOTOSTATS]

(Opposite) ☛

Tri State Energy Inc.

Date Made		Amount
10-20-72	Renewal	$50,000
11-22-72		$50,000
11-22-72		$50,000
11-30-72		$100,000
12-6-72		$275,000

2/26/73 — $475,000 - Demand Note

1-59

OD

MANAGEMENT DYNAMICS INC (RCD 12/6/72 RETURNED 12/19/72

	100 AA	-	General Investment Corp.
12/19/72 *	175 AA	-	Satellite Systems Corp
12/19/13 *	50 AA	-	Marlin Investment Company
1/30/73 *	1.591 20 AA	-	ALL State Life Insurance Co. Inc.
11/10/72	2 AA	-	American Leisure Corp
7/5/73 *	400 AA		

** Restricted Stock

We have not received a reply from ALL State Life Insurance Co. Inc. ~~the~~ Registrar as to wheather the stock is restricted or not.

** All of it except American Corp was not supposed to be restricted.

April 16, 1975

Judith Hicks

65-3
XXX

Government Exhibit 147, Pink Sheets—All States Life Insurance Co. Stock

ALL-STATES LIFE INSURANCE CO. — ALABAMA

"Pink Sheets" Listings:

October 1, 1972, through March 31, 1973

Date	*Name of Market Makers*	*Bid*	*Ask*
Oct. 23, 1972	Marshall Murray & Co., Inc.	—	—
Oct. 25, 1972	Marshall Murray & Co., Inc.	21	22
Oct. 27, 1972	Marshall Murray & Co., Inc.	21	22
Oct. 30, 1972	Marshall Murray & Co., Inc.	21	22
Oct. 31, 1972	Marshall Murray & Co., Inc.	—	—
Nov. 1, 1972	Marshall Murray & Co., Inc.	—	—
Nov. 2, 1972	Marshall Murray & Co., Inc.	21	22
Nov. 3, 1972	Marshall Murray & Co., Inc.	21	22
Nov. 6, 1972	Marshall Murray & Co., Inc.	21	22
Nov. 8, 1972	Marshall Murray & Co., Inc.	21	22
Nov. 9, 1972	Marshall Murray & Co., Inc.	21	22
Nov. 10, 1972	Marshall Murray & Co., Inc.	21	22
Nov. 13, 1972	Marshall Murray & Co., Inc.	21	22
Nov. 14, 1972	Marshall Murray & Co., Inc.	21	22
Nov. 15, 1972	Marshall Murray & Co., Inc.	21	22
Nov. 16, 1972	Marshall Murray & Co., Inc.	21	22
Nov. 17, 1972	Marshall Murray & Co., Inc.	21	22
Nov. 20, 1972	Marshall Murray & Co., Inc.	21	22

Government Exhibit 147

Date	*Name of Market Makers*	*Bid*	*Ask*
Nov. 21, 1972	Marshall Murray & Co., Inc.	21	22
Nov. 22, 1972	Marshall Murray & Co., Inc.	21	22
Nov. 27, 1972	Marshall Murray & Co., Inc.	—	—
Nov. 28, 1972	Marshall Murray & Co., Inc.	21	22
Nov. 29, 1972	Marshall Murray & Co., Inc.	21	22
Nov. 30, 1972	Marshall Murray & Co., Inc.	21	22
Dec. 1, 1972	Marshall Murray & Co., Inc.	21	22
Dec. 4, 1972	Marshall Murray & Co., Inc.	21	22
Dec. 5, 1972	Marshall Murray & Co., Inc.	21	22
Dec. 6, 1972	Marshall Murray & Co., Inc.	21	22
Dec. 7, 1972	Marshall Murray & Co., Inc.	21	22
Dec. 8, 1972	Marshall Murray & Co., Inc.	21	22
Dec. 11, 1972	Marshall Murray & Co., Inc.	21	22
Dec. 12, 1972	Marshall Murray & Co., Inc.	21	22
Dec. 13, 1972	Marshall Murray & Co., Inc.	21	22
Dec. 14, 1972	Marshall Murray & Co., Inc.	21	22
Dec. 15, 1972	Marshall Murray & Co., Inc.	21	22
Dec. 18, 1972	Marshall Murray & Co., Inc.	21	22
Dec. 19, 1972	Marshall Murray & Co., Inc.	21	22
Dec. 20, 1972	Marshall Murray & Co., Inc.	21	22
Dec. 21, 1972	Marshall Murray & Co., Inc.	21	22
Dec. 22, 1972	Marshall Murray & Co., Inc.	21	22
Dec. 26, 1972	Marshall Murray & Co., Inc.	21	22

Government Exhibit 147

Date	*Name of Market Makers*	*Bid*	*Ask*
Dec. 27, 1972	Marshall Murray & Co., Inc.	21	22
Dec. 29, 1972	Marshall Murray & Co., Inc.	21	22
Jan. 2, 1973	Marshall Murray & Co., Inc.	21	22
Jan. 3, 1973	Marshall Murray & Co., Inc.	21	22
Jan. 4, 1973	Marshall Murray & Co., Inc.	21	22
Jan. 5, 1973	Marshall Murray & Co., Inc.	21	22
Jan. 8, 1973	Marshall Murray & Co., Inc.	21	22
Jan. 9, 1973	Marshall Murray & Co., Inc.	21	22
Jan. 10, 1973	Marshall Murray & Co., Inc.	21	22
Jan. 11, 1973	Not In Sheets		
Jan. 12, 1973	Not In Sheets		
Jan. 15, 1973	Not In Sheets		
Jan. 16, 1973	Not In Sheets		
Jan. 17, 1973	Not In Sheets		
Jan. 18, 1973	Not In Sheets		
Jan. 19, 1973	Not In Sheets		
Jan. 22, 1973	Marshall Murray & Co., Inc.	21	22
Jan. 23, 1973	Marshall Murray & Co., Inc.	21	22
Jan. 24, 1973	Marshall Murray & Co., Inc.	21	22
Jan. 26, 1973	Marshall Murray & Co., Inc.	21	22
Jan. 29, 1973	Marshall Murray & Co., Inc.	21	22
Jan. 30, 1973	Marshall Murray & Co., Inc.	21	22
Jan. 31, 1973	Marshall Murray & Co., Inc.	21	22

Government Exhibit 147

Date	*Name of Market Makers*	*Bid*	*Ask*
Feb. 1, 1973	Marshall Murray & Co., Inc.	21	22
Feb. 2, 1973	Marshall Murray & Co., Inc.	21	22
Feb. 5, 1973	Marshall Murray & Co., Inc.	21	22
Feb. 6, 1973	Marshall Murray & Co., Inc.	21	22
Feb. 7, 1973	Marshall Murray & Co., Inc.	21	22
Feb. 8, 1973	Marshall Murray & Co., Inc.	21	22
Feb. 9, 1973	Marshall Murray & Co., Inc.	21	22
Feb. 13, 1973	Marshall Murray & Co., Inc.	21	22
Feb. 14, 1973	Marshall Murray & Co., Inc.	21	22
Feb. 15, 1973	Marshall Murray & Co., Inc.	21	22
Feb. 16, 1973	Marshall Murray & Co., Inc.	21	22
Feb. 20, 1973	Marshall Murray & Co., Inc.	21	22
Feb. 21, 1973	Marshall Murray & Co., Inc.	21	22
Feb. 22, 1973	Marshall Murray & Co., Inc.	21	22
Feb. 23, 1973	Marshall Murray & Co., Inc.	21	22
Feb. 26, 1973	Marshall Murray & Co., Inc.	21	22
Feb. 27, 1973	Marshall Murray & Co., Inc.	21	22
Feb. 28, 1973	Marshall Murray & Co., Inc.	21	22
Mar. 1, 1973	Marshall Murray & Co., Inc.	21	22
Mar. 2, 1973	Marshall Murray & Co., Inc.	21	22
Mar. 5, 1973	Marshall Murray & Co., Inc.	21	22
Mar. 6, 1973	Marshall Murray & Co., Inc.	21	22

Government Exhibit 147

Date	*Name of Market Makers*	*Bid*	*Ask*
Mar. 7, 1973	Marshall Murray & Co., Inc.	21	22
Mar. 8, 1973	Marshall Murray & Co., Inc.	21	22
Mar. 9, 1973	Marshall Murray & Co., Inc.	21	22
Mar. 12, 1973	Marshall Murray & Co., Inc.	21	22
Mar. 13, 1973	Marshall Murray & Co., Inc.	21	22
Mar. 14, 1973	Marshall Murray & Co., Inc.	21	22
Mar. 15, 1973	Marshall Murray & Co., Inc.	21	22
Mar. 16, 1973	Marshall Murray & Co., Inc.	21	22
Mar. 19, 1973	Marshall Murray & Co., Inc.	21	22
Mar. 20, 1973	Marshall Murray & Co., Inc.	21	22
	A. T. Brod	—	—
Mar. 21, 1973	A. T. Brod	—	—
Mar. 22, 1973	Marshall Murray & Co., Inc.	21	22
	A. T. Brod	—	—
Mar. 23, 1973	Marshall Murray & Co., Inc.	21	22
	A. T. Brod	—	—
	Dishy Easton	—	—

Government Exhibit 163

Affidavit of Confession of Judgment

[PHOTOSTAT]

(Opposite) ☛

BEST COPY AVAILABLE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No.

BANKERS TRUST COMPANY,

Plaintiff

against

WILLIAM R. RUBIN,

Defendant

AFFIDAVIT OF CONFESSION OF JUDGMENT

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

WILLIAM R. RUBIN,

duly sworn, deposes and says; that deponent is

† (the ~~corporation and is duly authorized to make this affidavit on behalf of the corporate~~ defendant herein.

The defendant hereby confesses judgment herein authorizes entry thereof against defendant in the sum of $ 529,000.00.

Defendant resides at 2000 Linwood Avenue, Fe, New Jersey 07024
in the County of Bergen State of rsey . Defendant authorizes entry
of judgment in** New York County, New said residence address is not in New York State.

This confession of judgment is for a debt justly due to the plaintiff arising from the following facts:

(1) Claim based on a written Gua[rantee] TRI-STATE ENERGY, INC., presently indebted with interest from March 9, 1973, amount[ing] $508,250.00, no part of which has been [paid] yment of the obligations of aintiff in the sum of $475,000.00 3,250.00, making a total of ough due and duly demanded.

(2) Claim for $20,000.00, based on $10,000.00 each for monies loaned by [plaintiff] February 3, 1972, amounting to $750.00. which has been paid although due and [demanded] Promissory Notes in the sum of defendant, with interest then total of $20,750.00, no part of ded.

This affidavit, if made in connection with an [agreement] modities for any use other than a commercial or [business] price or cost is payable in two or more installments [and] the payment of an installment thereunder.

or the purchase for $1,500.00 or less of any com- on any plan of deferred payments whereby the d subsequent to the time a default occurred in

Sworn to before me this
12th day of October 19 73

Vera E. Hershkopf

VERA E. HERSHKOPF
Notary Public, State of New York
No. 31-4766750
Qualified in New York County
Commission Expires March 30, 1975

The name signed must be printed beneath

WILLIAM R. RUBIN

** If in a city court, insert name of city. If in the county of Westchester, strike out.
† Strike out matter in parentheses if defendant is individual.
* Insert words "to become" if debt is not yet due.

163

Petitioner's Exhibit J, Minutes of First Board of Directors, Tri-State Energy Held July 7, 1972

MINUTES OF FIRST MEETING OF BOARD OF DIRECTORS OF TRI-STATE ENERGY, INC.

The first meeting of the Board of Directors of Tri-State Energy, Inc., was held at Whitesburg, Letcher County, Kentucky, on July 7, 1972, pursuant to call and waiver of notice.

The following Directors of the corporation were present, constituting a majority of the Board:

C.W. Deaton Jack Deaton

C.W. Deaton exhibited a waiver of notice of the meeting signed by Leonard James, director.

C.W. Deaton was chosen Chairman of the meeting and Jack Deaton was chosen Secretary of the meeting.

By-laws were presented to the meeting, which were read and unanimously approved.

The Chairman called for the nomination of officers and the following persons were unanimously elected to serve for the term provided in the by-laws:

Leonard James—President

C. W. Deaton—Executive Secretary and Treasurer

Jack Deaton—Manager

C. W. Deaton, Executive Secretary and Treasurer then took charge of the meeting and acted as Chairman and presented the following resolutions to the Board, which were unanimously carried:

Petitioner's Exhibit J

RESOLVED, That the First Security Bank of Whitesburg, Kentucky, and Bank of Whitesburg, Whitesburg, Kentucky would be the depository of the corporation's funds and the Secretary-Treasurer was authorized to pay all incorporation expenses and to order a corporate seal.

RESOLVED: That Jack Deaton should be and he is hereby authorized as the managing agent of the corporation, to write checks from time to time in amounts up to $5,000.00 per draft or check.

C. W. Deaton then presented a contract with Georgianna Coal Sales, Big H. Combs Coal Co., Inc. and Herman Combs, Jr., individually, for the mining of coal, which contract was made to Ben Harvey as second party, with authorization to assign same to the corporation and upon the exhibition of the assignment of all contract rights in the corporation, the Board of Directors unanimously agreed to accept said contract and the Secretary was directed to so inform the President of Georgianna Coal Sales, Big H. Combs Coal Co., Inc., and Herman Combs, Jr., individually of the assignment.

RESOLVED: That on the 9th day of June, 1972, C. W. Deaton, acting as trustee, assigned two and one half million tons of future production of coal to North American Planning Corporation, 230 Park Avenue, New York City, New York, and the Corporation recognizes and accepts said obligation and ratifies the same in every respect.

RESOLVED: That on the 9th day of June, 1972, C. W. Deaton, acting as trustee, assigned two and one half million tons of future production of coal to American Leisure, Inc., 230 Park Avenue, New York City, New York, and the corporation recognizes and accepts said obligation and ratifies the same in every respect.

Petitioner's Exhibit J

The Secretary-Treasurer then advised that $35,000.00, the amount set forth in the Articles, had been paid in and the corporation would issue shares as follows:

Leonard James	50 shares
C. W. Deaton	50 shares

Leonard James President

C. W. Deaton
Executive Secretary and Treasurer

Order Granting Certiorari

SUPREME COURT OF THE UNITED STATES

No. 79-1013

WILLIAM RUBIN, Petitioner

v.

UNITED STATES

Order Allowing Certiorari. Filed April 14, 1980

The petition for a writ of certiorari is granted limited to Question 1 presented by the petition.